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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 90.

THE MERCHANTS AND MANUFACTURERS' NATIONAL BANK OF PITTSBURGH AND THE STEUBENVILLE FURNACE AND IRON COMPANY, APPELLANTS,

vs.

JOHN S. SLAGLE AND REUBEN MILLER, TRUSTEES OF ZUG AND COMPANY; WILLIAM C. MACRUM, ADMINISTRATOR OF JOHN LINDSAY, DECEASED; THOMAS M. CARNEGIE, EXECUTOR OF WILLIAM COLEMAN, DECEASED; D. W. C. BIDWELL, THE DIAMOND NATIONAL BANK OF PITTSBURGH, ALEXANDER REYNOLDS, AND THE BANK OF PITTSBURGH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 17, 1879.

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1 Among the rolls, records, and judicial proceedings had in the circuit court of the United States in and for the western district of Pennsylvania, entered at No. 15, May term 1878, in equity, may be found the following words and figures, to wit:

Equity docket entries.

THE MERCHANTS AND MANUFACTURERS' NATIONAL Bank of Pittsburgh and the Steubenville Furnace and Iron Company, partnership creditors of Zug & Company, bankrupts,
vs.
JOHN S. SLAGLE AND REUBEN MILLER, trustees of Zug & Co., bankrupts. } 15.

Bill in aid of proceedings in bankruptcy, filed December 26th, 1877. Same day subpœna issued, returnable first Monday of January next. 1877, December 27, subpœna served personally and by copy upon John S. Slagle and Reuben Miller, trustees, &c.; mar. $5.00. 1877, December 29, order granted allowing W. C. Macrum, adm'r of Jno. Lindsey, dec'd, an individual creditor of C. Zug, to intervene as one of the parties defendant. 1877, December 29, on motion, order granted allowing the Bank of Pittsburgh, Wm. Coleman, the Diamond National Bank of Pittsburgh, D. W. C. Bidwell, Alex.
2 Reynolds, and W. C. Macrum, individual creditors of C. Zug, to intervene as parties defendant. 1877, December 29, demurrer of the Bank of Pittsburgh filed. 1878, March 9, notice to put case down for argument upon demurrer filed. 1878, April 26, answer of the Bank of Pittsburgh, Diamond National Bank, D. W. C. Bidwell, W. C. Macrum, adm'r Thomas M. Carnegie, Alexander Reynolds, filed. 1879, April 30, answer of Reuben Miller and John S. Slagle, trustees filed. 1879, May 7, complainants' replication filed. 1879, June 5, stipulation of counsel as to use in the above case of testimony taken and used in the U. S. district court for this district, in case in bankruptcy at 2675, filed. And now, June 11, 1879, this cause came on to be heard upon bill, answer, and evidence, and argument of counsel, and, upon consideration thereof, it is ordered, adjudged, and decreed that the said bill be dismissed at the costs of the complaintants, by the court. 1879, June 25th, on motion of counsel for complainants, an appeal from the decree of dismissal entered in this case allowed, and petition therefor filed. 1879, June 30, assignments of error and prayer for reversal filed.

3 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh, Pennsylvania, a banking corporation organized and existing under the laws of the United States, and the Steubenville Furnace and Iron Company, a corporation organized under the laws of Ohio, and doing business in the State of Ohio, partnership creditors of Zug & Co., bankrupts, on their own behalf and on behalf of all other partnership creditors of said bankrupts who may join in this bill as plaintiffs,

versus

JOHN S. SLAGLE AND REUBEN MILLER, CITIZENS of the State of Pennsylvania, trustees of said Zug & Company, bankrupts, defendants.

No. 15. May term, 1878. In equity.

To the honorable the judges of said court:

Your orators complain and say—

I. That on the 11th day of March, A. D. 1876, Christopher Zug and Charles H. Zug, late partners doing business under the firm name
4 of Zug & Co., at Pittsburgh, in the western district of Pennsylvania, presented their petition in the United States district court for said district, to obtain the benefit of the national bankrupt act approved June 2nd, 1867, and its supplements; that in the schedule filed by said bankrupts your orator the Merchants and Manufacturers' National Bank of Pittsburgh appeared as, and really is, a creditor of the firm of Zug & Company to the amount of $48,419.50; and your orator the Steubenville Furnace and Iron Company to the amount of $9,322.15; that the total indebtedness of said partnership appeared by said schedule to be $487,687.99, while the indebtedness of said Christopher Zug was set forth at $164,465.28 and the indebtedness of said Charles H. Zug at $19,158.92.

II. That proceedings were so had upon said petition that on the 14th day of April, 1876, at the first meeting of the creditors of said bankrupts, a proposition of compromise made by them was rejected by their creditors, and the defendants John S. Slagle and Reuben Miller were duly chosen, under the provisions of the national bankrupt act, trustees of the estates of said bankrupts, with such powers and bound to such duties as by law were and are incident to trustees appointed under the 43rd section of said bankrupt act, to take, hold, wind up, and settle said bankrupts' estates, and to make distribution thereof among
5 such creditors as might be entitled thereto; and John Dunlap, Wm. H. Smith, and William Clark were at the same meeting duly chosen a committee of supervision and inspection; that said action was duly approved by said district court, which thereupon made an order superceeding said bankruptcy proceedings; that thereupon the estates of said bankrupts, joint and separate, were duly assigned and transferred to said trustees.

III. That the schedule of said bankrupts as filed (and not objected to or sought to be amended by any party), it appears that the assets of said partnership of Zug & Company, and of the individuals comprising it, were sufficient to pay thirty per centum of the liabilities of said firm

and of its members respectfully, and upon October 14th, 1876, pending the administration and settlement of said estates by said trustees, the said district court granted the said bankrupts their discharge. And your orators further show that by the change in the character of the assets of said Zug & Company, hereinafter complained of, said assets were made insufficient to pay thirty per centum of the indebtedness of said firm.

IV. That the said trustees and committee, having accepted the
6 trust imposed in them, entered upon and proceeded with the performance of their duties in accordance with the terms and provisions of said bankrupt act, and on the 15th day of July, 1876, declared a dividend of ten per centum upon the several claims of the partnership creditors of said firm then proved and paid out the same to said creditors, who received and receipted therefor.

V. That the said trustees filed with the committee their final accounts of the said bankrupt's estates, which the said committee approved and passed, and on the 22nd day of December, 1876, said trustees gave notice to the creditors of said firm bankrupt, and to the creditors of the individual members thereof, that they had filed with the committee of creditors their separate final accounts of the joint and separate estates of the said bankrupts, and said accounts had been examined, allowed, approved, and confirmed by the said committee, by whom an order had been passed directing said trustees to pay and distribute dividends to the said joint and separate creditors respectively, a certain percentage to each, proportionate to their claims and to the funds in the hands of said trustees; and your orator avers that in said account the proceeds of the sale of the Sable Iron Works were credited by said trustees to
7 the partnership creditors of Zug & Company, and that in schedules of distribution said proceeds were to be paid to said creditors.

VI. That thereupon certain of the individual creditors of Christopher Zug, having first filed exceptions to said accounts and distribution with said trustees, presented a petition to the district court of the United States on the fifth day of January, 1877, in which (inter alia) they pray the said court would continue or resume and continue jurisdiction over said bankrupt proceedings, and that said trustees might be ordered to exhibit and file in said court just and true accounts of the estates, joint and separate, of said bankrupts, to the end that the same might be duly audited and the estates of said bankrupts marshaled and distributed in due course and according to law.

VII. That thereafter various proceedings were had in said matter, and it was so brought about that finally, on the 13th day of July, 1877, the said district court made an order and decree sustaining the said exceptions filed to the said trustees' accounts, modifying and amending said accounts and ordering a distribution, whereby the assets appearing by the schedules originally filed, and never excepted to be the assets of the firm of Zug & Company, were divested from the
8 creditors of said firm and ordered to be paid to the creditors of the individual members thereof, all of which acts and proceedings, as the same remain of record, your orator craves leave to produce and refer to upon the hearing of this bill.

VIII. And your orators now further show to your honors that the matter in controversy in said proceedings referred to is the sum of one hundred and twenty-nine thousand dollars ($129,000), the proceeds realized by the said trustees from the sale of the Sable Iron Works, in the city of Pittsburgh, which property was in law and in fact the part-

nership property of the firm of Zug & Company, was returned in their schedules as partnership property, and which it is conceeded on all hands was purchased and held by said bankrupts with their partnership funds for partnership purposes. That in and by the decree of said court, hereinbefore referred to, the interest of the said partnership creditors in said property is divested, and the same is to be distributed to and among the creditors of the individual members of said firm in the proportion of one-fifth to the creditors of C. H. Zug and four-fifths to the creditors of Christopher Zug.

IX. And your orators now aver and charge (*a*) that said district court had no jurisdiction in the manner assumed to decree a change
9 of the character of said property in the hands of said trustees, from partnership to individual, while the said schedules remained unamended and after the said bankrupts had been discharged. (*b.*) That said court had no jurisdiction upon the application made as aforesaid to control the discretion of said trustees and committee acting bona fide in the administration and distribution of said bankrupts' estate. (*c.*) That said court had no jurisdiction to decree, because of want of proper parties to said proceedings. (*d.*) That said court had no jurisdiction in any event in the manner and form of proceedings in which said jurisdiction was assumed. (*e.*) And finally, the decree was contrary to law, equity, and good conscience, and is void.

X. And your orator further shows unto your honors that said trustees threaten to so amend their accounts as to include in the credits due to the individual creditors of Christopher Zug and Charles H. Zug the proceeds of the Sable Iron Works, which according to said bankrupts' schedules, and in fact, are the property of the partnership creditors of said firm, and now threaten to proceed to a distribution of the estate of said Zug & Company, bankrupts, in accordance with said void decree aforesaid, and to pay out to the individual creditors of
10 said C. Zug and C. H. Zug assets included in their schedule as partnership assets, and which, in point of fact, properly belong to the said partnership creditors, and that said trustees will make such distribution unless restrained by law.

Wherefore your orator needs equitable relief, and pray:

1st. That now, by preliminary injunction to be made final on hearing, said trustees of Zug & Company, bankrupts, viz, Reuben Miller and John S. Slagle, be restrained from making distribution of the moneys now in their hands, the proceeds of the Sable Iron Works, otherwise than to and among the partnership creditors of the said firm of Zug & Company.

2nd. That it be decreed that the said order of the district court aforesaid, in the said proceedings hereinbefore referred to, controlling and directing the trustees in their account and distribution of the assets of said bankrupts, as approved by said committee, is null and void.

3rd. That the trustees be ordered and directed to proceed in the distribution of said bankrupts' estates in accordance with the account and schedule of distribution by them prepared, which was approved by said committee, of which said trustees gave notice to the creditors of said bankrupts on December 22nd, 1876.

11 4th. Such other and further relief as to your honors shall seem meet and as the circumstances of the case may require.

And to that end, may it please your honors, to grant unto your orators the writ of subpœna of the United States of America, to be directed to the said John S. Slagle and Reuben Miller, commanding them and each of them, at a certain day, under a certain penalty therein to be inserted,

personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as your honors shall deem meet. And your orators will ever pray.

MERCHANTS & MANUFACTURERS'
NATIONAL BANK OF PITTSBURGH,
By W. A. SHAW, *Cas.*
THE STEUBENVILLE FURNACE
AND IRON COMPANY,
By H. & D. and S. & W., *their Att'ys.*

Solicitors for complainants:
HAMPTON & DALZELL.
SLAGLE & WILEY.

12 WESTERN DISTRICT OF PENNSYLVANIA,
City of Pittsburgh, ss:

Before me, the undersigned, personally came W. A. Shaw, cashier of the Merchants and Manufacturers' National Bank of Pittsburgh, plaintiff, who, on his solemn affirmation, says the allegations of the foregoing bill are true as far as the same are stated of his own knowledge, and so far as stated upon information are true to the best of his information and belief.

SEAL OF WM. LITTLE, NOTARY PUBLIC, PITTSBURGH, PA.

W. A. SHAW.

DECEMBER 26*th*, 1877.

WM. LITTLE,
Notary Public.

(Indorsed:) No. 15. May term, 1878. The Merchants & Manufacturers' National Bank of Pittsburgh et al. vs. John S. Slagle and Reuben Miller. Filed Dec. 26, 1877.

13 *Subpœna.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The United States of America to John S. Slagle and Reuben Miller, trustees of Zug & Company, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the western district of Pennsylvania, at the city of Pittsburgh, in said district, on the first Monday of January next, to answer the bill of complaint of the Merchants and Manufacturers' National Bank of Pittsburgh, a corporation organized and existing under the laws of the United States, and the Steubenville Furnace and Iron Company, a corporation organized under the laws of the State of Ohio, partnership creditors of Zug & Company, bankrupts, this day filed in the clerk's office of said court, in the city of Pittsburgh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default; and this you are in no wise to omit, under such penalties as are inflicted by the laws of the United States.

14 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Pittsburgh aforesaid, this 26th day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 102nd.

{ SEAL OF THE U. S. CIRCUIT COURT, W. D. OF PENNA. }

H. D. GAMBLE, *Clerk.*

MEMORANDUM.—The above-named defendants are required to enter an appearance in this suit in the clerk's office of said court, on or before the day to which the above writ is returnable, otherwise the complaint will be taken against them as confessed, and a decree entered accordingly.

H. D. GAMBLE, *Clerk.*

(Indorsed:) No. 15. May term, 1878. Merchants and Manufacturers' National Bank of Pittsburgh et al. vs. John S. Slagle and Reuben Miller, trustees of Zug & Co., bankrupts. Chancery subpœna, returnable to first Monday in January, A. D. 1878. H. D. Gamble, cl'k. Hampton & Dalzell, Slagle & Wiley, sol's for compl'ts.

Marshal's service.

Dec. 27, 1877, served the within writ upon John S. Slagle and Reuben Miller, trustees of Zug & Company, personally and by copy.

JOHN HALL, *U. S. M.*,
Per R. K. CAMPBELL, *Deputy.*

15 In the circuit court of the United States in and for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh *vs.* JNO. S. SLAGLE AND REUBEN MILLER. } No. 15. May term, 1878.

And now, to wit, December 29th, 1877, on motion of J. M. Stoner, attorney for W. C. Macrum, administrator of John Lindsey, dec'd, an individual creditor of C. Zug, leave granted said creditor to intervene as one of the parties defendant.

By the court.

(Indorsed:) No. 15. May term, 1878. Merchants and Manufacturers' National Bank et al. vs. John S. Slagle and Reuben Miller, trustees. Order granted allowing W. C. Macrum, administrator, to intervene as co-defendant. Filed December 29, 1877.

16 In the circuit court of the United States in and for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh et al. *vs.* JOHN S. SLAGLE AND REUBEN MILLER. } No. 15. May term, 1878.

And now, to wit, December 29th, 1877, on motion of George Shiras, jr., and George P. Hamilton, leave granted the Bank of Pittsburgh, and William Coleman, the Diamond National Bank of Pittsburgh,

D. W. C. Bidwell, Alexander Reynolds, and W. C. McCrum, individual creditors of C. Zug, to intervene as parties defendant.

By the court.

Filed Dec. 29, 1877.

17 Circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank et al.
vs.
REUBEN MILLER AND JOHN S. SLAGLE ET AL.
No. 15. May term, 1878. In equity.

Now comes the Bank of Pittsburgh, one of the said defendants, and protesting that the allegations in the said bill of complaint are not true in manner and form therein contained, prays judgment whether said defendant ought to make further or other answer to the said bill, and for cause of demurrer do show the court that the said suit is not brought by an assignee in bankruptcy against any person claiming an adverse interest, or by any such person against an assignee touching any property or rights of the bankrupts, transferable or vested in such assignee, but that the said suit has to do with the marshalling and distribution of the different funds and assets, so as to secure the distribution of the assets among all the creditors, and that hence this honorable court cannot take cognizance or jurisdiction of said suit, or of the subject thereof in manner and form as set forth in said bill of complaint.

18 Wherefore the said defendant prays judgment whether the said defendant ought to make further or other answer to said bill of complaint, and prays to be hence dismissed with reasonable costs.

THE BANK OF PITTSBURGH,
By GEO. SHIRAS, JR.,
Its Attorney.

I hereby certify that the foregoing demurrer is well founded in point of law.

GEO. SHIRAS, JR.

(Endorsed:) No. 15. May term, 1878. M. and M. N. Bank et al. vs. John S. Slagle et al. Demurrer of the Bank of Pittsburgh. Filed Dec'r 29th, 1877. Shiras.

19 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh et al.
versus
JOHN S. SLAGLE AND REUBEN MILLER, trustees, &c.
No. 15. May term, 1878.

The joint and several answer of William C. McCrum, administrator of John Lindsey, dec'd, Thomas M. Carnegie, executor of William Coleman, dec'd, D. W. C. Bidwell, the Diamond National Bank, a corporation existing under the national currency act and having its place of business in the city of Pittsburgh, Alexander Reynolds, and the Bank of Pittsburgh to the bill of complaint of the above complainants.

These respondents and interveners, by leave of said court, reserving to themselves all right of exception to the said bill, for answer thereto say:

1st. That they are severally and respectively creditors of the said C. Zug individually, and as such creditors have duly proved their several and respective claims against the separate estate of the said debtor in bankruptcy; that the indebtedness to said Macrum, administrator as aforesaid, is eight thousand four hundred and twenty-two and $\frac{95}{100}$ dollars, for which he holds the promissory notes of C. Zug; that the indebtedness to said Coleman's estate is seventeen thousand four hundred and ninety-one & $\frac{08}{100}$ dollars, and arose out of an indorsement for the accommodation of said debtor by said Coleman in his lifetime; the indebtedness to the said D. W. C. Bidwell is eleven thousand nine hundred and twenty-five dollars, and arose in like manner; the indebtedness to said Alexander Reynolds is seven thousand four hundred and seventy-three and $\frac{14}{100}$; the indebtedness to the Diamond National Bank is five thousand and three dollars; and the indebtedness to the Bank of Pittsburgh is seventy-four thousand eight hundred and two and $\frac{51}{100}$ dollars.

2nd. They admit the allegations contained in the first paragraph of the complainants' bill.

3rd. They are informed and believe that the allegations contained in the second paragraph of the said bill are true, but they have also been informed and believe that said trustees and committee were chosen by the creditors of the firm of C. Zug & Co. exclusively, and that said proceeding' in bankruptcy were superseded, not absolutely or finally, but only until the further order of the court in bankruptcy.

21 4. They are informed and believe that the assets, real and personal, of C. Zug & Co., according to the schedules annexed to their said petition in bankruptcy, amount to $596,845.66, exclusive of the said Sable Iron Works; that the assets of said C. Zug individually, exclusive of his interest in the said Sable Iron Works, amount to $202,410.00, and that the assets of said Charles H. Zug individually, exclusive of his interest in the said Sable Iron Works, amount to $7,261.00, and they deny that the change in the assets of said Zug & Co., by transferring the proceeds of said Sable Iron Works from the assets of C. Zug & Co. to the assets of C. Zug and Charles H. Zug, respectively, rendered the assets of C. Zug & Co. insufficient to pay 30 per centum of the indebtedness of said firm, according to the schedule of assets and liabilities of said firm annexed to their said petition in bankruptcy; but whether so or otherwise they are informed and believe is wholly immaterial in this proceeding.

5. They are informed and believe that the allegations contained in the fourth paragraph of the complainants' bill are true, but they deny that said dividend of 10c. upon the several claims of the partnership creditors of the said firm, was made or paid out of the proceeds of the said Sable Iron Works (if the complainants mean to assert that

22 such is the fact), and *and* they aver that the said dividend was declared and paid out of the personal assets or joint stock of said firm exclusively, and that no part of the proceeds of said Sable Iron Works entered into or formed any part of said dividend, as will fully appear by reference to the accounts of said trustees, filed in the district court of the United States for this district, on June 12th, 1877, to which respondents crave leave to refer upon the hearing of this case.

6. They are informed and believe that the allegations contained in the fifth paragraph of the said bill are true; but they are further in-

formed and believe that prior to the sale of the said Sable Iron Works, and also prior to the declaration of the dividend mentioned in paragraph fourth of said bill, the said trustees and committee, and the creditors generally of said firm of Zug & Co., including the said complainants residing in and about the city of Pittsburgh, had been informed and understood that there was a conflict of opinion between the creditors of said firm and the creditors of said C. Zug individually in respect to the status of said Sable Iron Works as to whether the same was the property of the said firm or belonged to the members thereof individually; that at or about the time aforesaid, and before the sale of the said Sable Iron Works, the said William Coleman proposed
23 in writing, to the creditors of said firm, through said trustees and committee, that said question in respect of said Sable Iron Works should be submitted in the form of a case stated, to the judge of said court to be by him decided and determined, but which proposition was declined, and a copy thereof is hereto annexed and made part of this answer.

7. In the month of August, 1876, long before the final account of said trustees was passed upon and approved by said committee, they were notified by said William Coleman and other creditors in writing that the said Sable Iron Works was the property of C. & C. H. Zug individually, and that they, the said creditors, would claim that the proceeds thereof should be distributed accordingly.

8. They are informed and believe that the allegations contained in the fifth paragraph of said bill are true, but allege that said account had been made out by said trustees, and finally approved by said committee before said notice had been given to said creditors.

9. They admit that they filed with said trustees exceptions to said account, and therein excepted (inter alia) to marshalling the proceeds of said Sable Iron Works with the assets of said firm of C. Zug & Co., and the distribution of the same to the creditors of said firm; but they aver that they filed said exceptions under protest.

24 10. They are informed and believe that the allegations contained in the sixth paragraph of said bill are true; but they aver that said petition set forth (inter alia) that "said trustees claiming the right so to do, have included in their account of the stock and property of said copartnership, the individual estates of said copartners and inter alia and more especially the proceeds of the Sable Iron Works, amounting to the sum of $129,000.00, which belong, as your petitioners are advised by counsel, and expect to be able to prove, to the said copartners individually, as tenants in common, in the proportion of four-fifths to the said Christopher Zug, and one-fifth to the said Charles H. Zug, and have undertaken in and by their said account to award and distribute the same to the creditors of the said copartnership to the entire exclusion of your petitioners and other individual creditors of said copartners;" and the respondents aver that said trustees and committee had no power to adjudge and determine whether the said Sable Iron Works, or the proceeds thereof, were copartnership property, or the separate property of the copartners, or to adjudge and determine conflicting claims of creditors to the estate of said bankrupts; and moreover, if they had the power, the said committee, and the said
25 trustees (except Reuben Miller, whose father was a partnership creditor), by reason of largely predominating interests as creditors of said copartnership, are disqualified, and incompetent to sit in judgment upon said questions; that said John S. Slagle was a member, at that that time (as they are informed and believe and charge) of

Nimick & Co., who were creditors exclusively of Zug & Co. in the sum of $40,000.00; that said John Dunlap was a creditor of said firm in the sum of $20,000.00, and of C. Zug, individually, in the sum $2,500.00; that said William Clark was a creditor of said firm exclusively in the sum of $2,132.13; and the said William H. Smith, according to the schedule of debts, was a creditor of said firm in the sum of $9,000.10, and a creditor of C. Zug, individually, in the sum of $2,500.00.

11. That thereupon, in the said proceedings, a rule was granted on the said trustees "to show cause on or before the 18th January, 1877, why the prayer of the petitioners should not be granted, and in the mean time, the said trustees are ordered to abstain from paying out to creditors the funds of said bankrupts estates, and it is further ordered that a copy of said petition, without the annexments, and also of this rule be served on the said trustees and committee, on or before the 8thday of January, inst." On the 20th January, 1877, the said petitioners presented to
26 said court their supplemental petition, praying that they might be allowed to amend said first petition (inter alia) by making said committee a party to said proceeding, and if the prayer of the original petition should be regarded as too broad, to limit the same to a resumption of jurisdiction for the purpose of deciding and determining whether the said Sable Iron Works is copartnership or individual property, and decreeing distribution of the proceeds thereof accordingly; and on the 18th January, 1877, the said trustees filed their answer to said petition and rule, and on the 27th January, 1877, the said committee filed their answer to said petition and rule; and subsequently said court, on the 20th April, 1877, did order and decree as follows: "Now, April 20th, 1877, it is ordered that Wm. H. Smith, John Dunlap, and William C. Clark, committee of inspection, and Reuben Miller and John S. Slagle, trustees of the estate of the said bankrupts, do exhibit and file in this court, within thirty days hereafter, a just and true account of the estates, joint and several, of the said bankrupts; also setting forth the different properties of the said bankrupts and the moneys derived therefrom, respectively, with the report of distribution; which said proceedings and decree the said trustees on the day of , 1877,
27 carried by bill of review into the circuit court of the United States for the said district, and after hearing and due consideration thereof the said court did, on the 23rd day of May, 1877, make the following order and decree: "And now, May 23rd, 1877, this bill having been heard, &c., it is ordered that the order of the district court complained of be affirmed, except so far as it relates to the committee named therein, as to whom said order is reversed, and the petition or bill against them is dismissed; and also as to the direction to report distribution, which is stricken out, as premature," all of which said proceedings are made part of this answer, and respondents crave leave to refer to the same on the hearing of this cause.

12. The said trustees did, on the 28th May, 1877, exhibit and file in said district court what they claimed to be their final account of the estate of said Zug & Co., and of C. Zug, and C. H. Zug, individually, which said account was confirmed nisi on the 12th June, 1877, and said court then made the following order: "Now, June 12th, 1877, it is ordered that the clerk of the district court give notice to the creditors of the above bankrupts, by circular, that the account of the trustees of said estate has been filed in this court and confirmed nisi, and
28 that unless exceptions be filed thereto, on or before June 25th, 1877, the said account will be confirmed absolutely on that day."

13. The respondents filed exceptions to the said account on the 31st day of May, 1877, and therein excepted to said account upon the ground, inter alia, that said trustees had mingled therein with the assets of said firm the proceeds of said Sable Iron Works, and marshalled and distributed the same to the creditors of said firm of Zug & Co., to the exclusion of the separate creditors of the individual members thereof. The said exceptions came on to be heard before said court on the 27th June, 1877, at which hearing twenty-one at least of the principal creditors of said firm of Zug & Co. were represented by counsel, and also the said trustees. At said hearing a large amount of testimony was produced before said court in relation to the status of said Sable Iron Works, as to whether the same was the property of Zug & Company or the separate estate of the members of said firm, and after further and due proceedings in said cause the said court, on the 13th day of July, 1877, made the decree following, to wit:

"And now, to wit, July 13th, 1877, this cause came on to be heard on exceptions to said accounts and proofs, and was argued by counsel, and the court being of the opinion that the Sable Iron Works belonged
29 to and was owned, at and prior to the commencement of said proceedings in bankruptcy, by the said Christopher and Charles H. Zug, as tenants in common, in the proportion of four-fifths to the former and one-fifth to the latter, it is therefore ordered, adjudged, and decreed that the exceptions to said account be, and are, sustained, and that the account of said trustees of the joint stock or copartnership estate of the firm of C. Zug & Co. be, and is hereby, discharged of and from the sum of one hundred and thirty thousand dollars, proceeds of said Sable Iron Works, and that their said account of the separate estate of the said Christopher Zug be surcharged with the four-fifths, and their account of the separate estate of the said Charles H. Zug be surcharged with the one-fifth of the said proceeds, and that the account of said trustees, as hereby modified, be, and is hereby, confirmed absolutely; and it is further ordered, adjudged, and decreed that the said trustees do distribute and pay out, in accordance with this decree, the estate of said bankrupts in their hands to creditors, respectively, who have proved their claims, unless an appeal be taken from, or bill of review to, this decree within the time prescribed by law, and that said trustees do pay the taxable costs of this proceeding out of the joint stock or copartnership estate of said bankrupts.

"Per curiam."

30 14. That said Reuben Miller, jr., and Nimick & Co., on their own behalf and on the behalf of the other creditors of Zug & Co., removed said proceedings, including said decree, into the said circuit court for review, and after due proceedings in said cause, the said circuit court, on the 22nd September, 1877, being of opinion that the said district court rightfully adjudged the fund in controversy to be assets of the individual members of the firm of Zug & Co., and ordered its distribution accordingly, dismissed said bill of review at the cost of the complainants.

15. The respondents deny that said Sable Iron Works was in law and in fact the partnership property of the firm of Zug & Co.; but admit the same was scheduled in bankruptcy as such; and they deny that it was conceded on all hands that said property was purchased and held by said bankrupts, with partnership funds and for partnership purposes; but admit that said firm carried on at said Sable Iron Works the business of manufacturing iron, nails, &c.; that said property was assessed in the name of said firm, and that they paid the taxes thereon; and

that it was treated in the books of said firm as partnership property; but the respondents say they are informed and believe that said
31 property belonged originally to the firm of Zug and Painter, composed of C. Zug and Jacob Painter, which firm was dissolved on or about August 30, 1864, and before the firm of Zug & Co. had been formed; that the said Painter and wife, by their deed dated August 30, 1864, recorded August 17th, 1864, conveyed to said C. Zug, his heirs and assigns, the three undivided fourth parts of lots Nos. 72 and 73, in Bayard's plan, which said lots were adjacent to and constituted an integral part of said Sable Iron Works, by means of which said several conveyances the said C. Zug became seised in severalty of the said Sable Iron Works, and continued so seised until March 20th, 1867, when he, by his deed of that date, recorded March 22d, 1867, conveyed to the said Charles H. Zug, his heirs and assigns, the undivided fifth part of all the property constituting the said Sable Iron Works; that in none of the conveyances to the said C. Zug, nor in his conveyance to the said Charles H. Zug, is there any reference to any partnership, actual or contemplated, between the said C. & C. H. Zug; that subsequent to the 20th of March, 1867, the said C. & C. H. Zug purchased from Elizabeth McBride et al. a certain other piece of property adjacent to the said Sable Iron Works, and afterwards consolidated with it for the consideration of $2,600,
32 which property was conveyed by deed dated August 31st, 1872, recorded October 5, 1872, to the said C. & C. H. Zug, their heirs and assigns; that Sarah Niblock, by her deed dated the 6th April, 1871, recorded 8th April, 1871, conveyed to the said C. & C. H. Zug, their heirs and assigns, in the proportion of four-fifths to said C. Zug, and one-fifth to the said C. H. Zug, a certain other lot of ground adjacent to and constituting an integral portion of said Sable Iron Works property, and that in neither of said two last-described deeds was there any reference to any partnership between the said C. and C. H. Zug; that on the 11th day of January, 1876, only a few months prior to the institution of said proceedings in bankruptcy, the said C. and C. H. Zug, as tenants in common and not as partners, created a mortgage on part of said Sable Iron Works in the sum of forty thousand ($40,000) dollars, in favor of the Pittsburgh Bank for Savings, which mortgage was duly recorded 20th January, 1876.

16. The respondents cannot state of their own knowledge, or upon information and belief, whether the property acquired by the said C. Zug, or the said C. & C. H. Zug, subsequently to the conveyance by Painter and wife and others to the said C. Zug, was paid for out of the assets of said firm, or out of moneys received by the said C. Zug, upon his own credit, and pray, if it be deemed material,
33 that said complainants may be required to make proof as to how and by whom said purchase-money was paid.

16½. The respondents cannot state of their own knowledge when the firm of Zug & Co. was formed, but they have been informed and believe the same was formed on or about the 20th March, 1867. They have also been informed and believe that the said C. and C. H. Zug, in carrying on the business of making iron, nails, &c., at the Sable Iron Works, were running two lines of credits of considerable magnitude; one in the name of said firm and the other in the name of C. Zug individually.

17. The respondents are informed and believe that the said trustees, at and prior to the marshalling of the assets of the said bankrupts as aforesaid, had possession of the original title-papers of said bankrupts

to the Sable Iron Works, but whether they had or sought professional advice as to the legal effect of said papers, they do not know of their own knowledge, nor can they state upon information and belief.

These respondents and interveners for a further defence to the said bill of complaint, say that the said bill is insufficient in law and not proper to be answered unto, and for cause hereof do show the court that the
34 said suit is not brought by an assignee in bankruptcy against any person claiming an adverse interest, or by any such person against an assignee, touching any property or rights of the bankrupts transferable to or vested in such assignee, but that the said suit has to do with the marshalling and disposition of the different funds and assets, so as to secure the due distribution of the assets among all the creditors, and that hence this honorable court cannot take cognizance or jurisdiction of said suit, or the subject thereof, in manner and form as set forth in the said bill of complaint.

Wherefore they pray judgment whether they ought to make further answer or plea to the said bill of complaint, and that the same may be dismissed, and these respondents allowed their reasonable costs.

ALEXANDER REYNOLDS,
Per GEORGE P. HAMILTON,
His Att'y.
THOMAS M. CARNEGIE,
Ex'r of W. Coleman.
By GEO. P. HAMILTON AND
M. W. ACHESON.
W. C. MACRUM,
Adm'r of John Lindsey, dec'd.
D. W. C. BIDWELL.
JOHN S. SCULLEY,
Cashier Diamond Nat'l B'k.
THE BANK OF PITTSBURGH,
By GEO. SHIRAS, JR., *Att'y.*

35 WEST. DIST. OF PENN'A, *ss:*

Personally appeared before me W. C. Macrum, who, being duly sworn, saith that all and singular the matters and things contained in the foregoing answer, so far as the same are stated of his own knowledge are true, and so far as the same are stated upon information he believes them to be true.

W. C. MACRUM.

Sworn and subscribed before me this 24th day of April, 1879.

H. D. GAMBLE,
Clerk U. S. Circuit C't.

36 To the creditors and trustees of C. Zug, C. H. Zug, and Zug & Co.:

GENTLEMEN: As one of the creditors of C. Zug I beg leave to suggest that as there is, or may be, a difference of opinion in regard to the right of the various creditors of said bankrupts as to the distribution of assets, it would be advisable for the assignees and creditors, by their attorneys, to make a stated case for Judge McKennan to decide amicably as to the right of the different clas'es of creditors to the proceeds of sale of said bankrupts' assets, so that their status can be clearly ascertained without further delay or expensive litigation. I believe this should be done before the property is again offered at public

sale, so that all classes of creditors, knowing their rights, can bid understandingly, and therefore a much better price can be obtained for the property. I would further suggest that the sale be postponed until such decision be obtained. To this end I offer the following resolution.

Resolved, That each class of creditors of C. Zug, C. H. Zug, and Zug & Co., bankrupts, do, through their appointed attorneys, prepare a stated case to be submitted to Judge McKennan, for his decision, setting forth the matter of title to real estate and other assets of said bankrupts, said decision to be binding upon all parties.

Answer.—Filed April 26, 1879.

37 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh, Pa., et al., &c.,
vs.
JOHN S. SLAGLE AND REUBEN MILLER, TRUSTees, &c.

No. 15. May term, 1878. In equity.

To the honorable the judges of said court:

The answer of John S. Slagle and Reuben Miller, trustees in bankruptcy of C. Zug and C. H. Zug, bankrupts, the respondents above named to the plaintiffs' bill, in above-stated case, respectfully shows:

1st. That as they, these respondents, are informed and believe the facts stated in the first paragraph of said plaintiffs' bill are true.

2nd. That as they are informed and believe the facts stated in the second paragraph of said plaintiffs' bill are true.

3rd. That as they are informed and believe the facts stated in the third paragraph of said bill are true; but they further say that the effect of the change in the character of assets alleged in the second clause of said paragraph is immeterial in this case.

38 4th. That the facts stated in the fourth paragraph of said bill are true, but they further say that the dividend therein recited was paid out of the proceeds of personal property belonging to the joint or partnership estate of said bankrupts.

5th. That the facts stated in the fifth paragraph of said bill are true, but they further say that no schedule of distribution was actually made or dividend paid under order therein recited.

6th. That the facts stated in the sixth paragraph of said bill are true, and these respondents annex hereto a copy of the petition therein mentioned, marked Exhibit A; they also annex hereto a copy of the answer of these respondents to said petition, marked Exhibit B; also a copy of supplemental petition by same individual creditors, marked Exhibit C; also a copy of the answer of these respondents, trustees, and of said committee thereto, marked Exhibit D; also a copy of the order of said district court made thereon April 20th, 1877, marked Exhibit E; also a copy of the order of said circuit court made May 23rd, 1877, upon a bill for review of the above-mentioned proceedings, marked Exhibit F.

39 They further say that upon the making of said order by said circuit court, these respondents, in obedience thereto, filed in said district court their several accounts, to which the said individual creditors filed exceptions, a copy of which is hereto annexed, marked Exhibit G. These respondents also annex hereto copies of orders of the said district court made July 13th and 14th, 1877, upon said account

and exceptions, marked Exhibit H. And they further say that certain of the joint or partnership creditors of said bankrupts took an appeal from said last-mentioned orders of the said district court to said circuit court, and also a bill for review and reversal of the same, which appeal was quashed by said circuit court, and the said bill for review dismissed, and thereupon the said joint or partnership creditors appealed therefrom to the Supreme Court of the United States, which appeal was also quashed by the said Supreme Court. These respondents refer to said appeal and bill for review of record at Nos. 162 and 163, November term, 1877, of said circuit court, and No. term, 1877, of said Supreme Court, and ask that said proceedings therein be made part hereof.

40 7th. That the facts stated in the seventh paragraph of said bill are true, as these respondents believe, and that a copy of the order mentioned therein, as well as subsequent proceedings thereon, are given in the next preceeding answer.

8th. The facts stated in the eighth paragraph of said bill are true, as these respondents believe, except the allegations that the Sable Iron Works property was in law and in fact the partnership property of the firm of Zug & Co., and that it is conceded on all hands the same was purchased and held by said bankrupts with their partnership funds for partnership purposes, which allegations these respondents for the purposes of this case do not admit, but submit the same to the judgment of the court.

9th. That the statements made in the ninth paragraph of said bill are conclusions of law which these respondents neither admit nor deny, but submit the same to the judgment of the court.

10th. That the facts stated in the tenth paragraph of said bill are true, except the allegations that the "Sable Iron Works" in fact are the property of the partnership creditors of said firm, and in

41 point of fact property belong to the said partnership creditors.

11th. That these respondents further say they caused notices of the filing of said bill in said circuit court, together with copies of the said bill, to be served upon all the individual creditors of said bankrupts —a copy of said notice is hereto annexed, marked Exhibit I; and that certain of said individual creditors have, by leave of court, intervened in this case for the purpose of making defence to said bill, and have filed their answers to said bill.

12th. These respondents pray to be hence dismissed, with their costs in this behalf expended.

REUBEN MILLER,
JOHN S. SLAGLE,
Trustees.

WESTERN DISTRICT OF PENNSYLVANIA:

Reuben Miller and John S. Slagle, being duly sworn, says the facts stated in the foregoing answer are true as they verily believe.

REUBEN MILLER.
JOHN S. SLAGLE.

Sworn to and subscribed this 30th day of April, A. D. 1879, coram.

H. D. GAMBLE,
U. S. Com'r.

42 EXHIBIT A.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

SEAL OF U. S. DISTRICT COURT, W. D. OF PENN'A.

I, S. C. McCandless, clerk of the district court of the United States for said district, do hereby certify that the annexed is a true copy of the petition and order on trustees and committee, dated January 5th, 1877, filed in my office, at No. 2675 in bankruptcy.

Witness my hand and the seal of said court, at Pittsburgh, in said district, this 6th day of January, A. D. 1877.

S. C. McCANDLESS, *Clerk.*

43 In the district court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER AND CHARLES H. ZUG, bankrupts. } No. 2675.

To the Hon. W. W. Ketcham, judge of the district court of the United States for the western district of Pennsylvania:

The petition of William Colman, D. W. C. Bidwell, Diamond Bank, and Alex. Reynolds respectfully represents that they are severally and respectively creditors of Christopher Zug individually, and as such have made due proofs of their said claims:

That in pursuance of the act of Congress in such case made and provided, Reuben Miller and John S. Slagle were duly appointed trustees of said Christopher and Charles H. Zug; and William H. Smith, John Dunlap, and William Clark were duly appointed a committee of the creditors of said bankrupts to inspect and direct the settlement of their said estates, all of which will more fully appear by reference to the records of your honorable court at No. 2675.

44 That said trustees have settled what purport to be final accounts of the joint stock and property of the copartnership of C. Zug & Co., comprised of the said Christopher and Charles H., and of the separate estates of said copartners, and have caused the same to be allowed, approved, and confirmed by said committee, as will more fully appear by a printed circular addressed to the creditors of said bankrupts, a copy of which is hereto annexed and made part hereof.

That your petitioners under protest have filed with said trustees and committee exceptions to said accounts, a copy of which is hereto annexed and made part hereof.

That said accounts show that the stock and property of said copartnership is wholly insufficient to pay in full the copartnership debts, and the separate estate of said copartners is wholly insufficient to pay in full their separate debts.

That said trustees, claiming the right so to do, have included in their account of the stock and property of said copartnership the individual estates of said copartners, and, inter alia, and more especially the

45 proceeds of the Sable Iron Works, amounting to the sum of one hundred and *and* twenty-nine thousand dollars, which belonged, as your petitioners are advised by counsel and expect to prove, to the said copartners individually, as tenants in common, in the proportions of

four-fifths to the said Christopher Zug and one-fifth to the said Charles H. Zug, and have undertaken, in and by their said account, to award and distribute the same to the joint creditors of said copartnership to the entire exclusion of your petitioners and other individual creditors of said copartners.

And your petitioners would respectfully suggest to your honorable court that said trustees and committee have no power to adjudge and determine whether the said Sable Iron Works, or the proceeds thereof, are copartnership property or separate property of the copartners, or so adjudge and determine conflicting claims of creditors to the estates of said bankrupts; and moreover, if they had the power, the said committee, by reason of having largely preponderating interests as creditors in the copartnership estate, are disqualified and incompetent to sit in judgment upon said questions.

Your petitioners therefore pray that your honorable court may
46 continue or resume and continue jurisdiction over said bankrupt proceedings, and that said trustees may be ordered to exhibit and file in this court just and true accounts of the estates, joint and several, of said bankrupts, to the end that the same may be duly audited, and the estate of said bankrupts marshalled and distributed in due course and according to law; and they will ever pray, &c.

WM. COLEMAN,
D. W. C. BIDWELL,
ALEX. REYNOLDS, AND
DIAMOND NATIONAL BANK,
By their att'y, GEORGE P. HAMILTON.

47 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

Before me personally came William Coleman, one of the above petitioners, and on his solemn oath says that the matters and things contained in the foregoing petition, so far as the same are stated of his own knowledge, are true, and so far as the same are stated on information he believes are true.

WM. COLEMAN.

Subscribed and sworn to before me this 4th day of January, A. D. 1877.

S. C. McCANDLESS,
Clerk U. S. Dist. Court, W. D. of Pa.

W. C. Macrum, administrator of John Lindsey, deceased, having proved his claim against the separate estate of Christopher Zug, hereby joins in the foregoing petition.

W. C. MACRUM,
Adm'r of John Lindsey,
By J. M. STONER,
His Att'y.

48 And now, January 5th, 1877, the within petition presented and ordered to be filed, and on motion of George P. Hamilton, solicitor for petitioners, rule on John S. Slagle and Reuben Miller, trustees of C. and C. H. Zug, bankrupts, to show cause on or before the 18th January, 1877, why the prayer of the petitioners should not be granted; and in the meantime said trustees are ordered to abstain

from paying out to creditors the funds of said bankrupts' estate; and it is further ordered that a copy of the said petition, without the annexments, and also a copy of this rule be served on said trustees and committee on or before the 8th day of January, inst.

W. W. KETCHAM, *Judge.*

49 EXHIBIT B.

In the district court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, bankrupts. } No. 2675. In bankruptcy.

To the honorable W. W. Ketcham, judge of said court:

The answer of Reuben Miller and John S. Slagle, trustees in bankruptcy of the bankrupts above named, respondents, to the petition filed by William Coleman and others, in said court, on the 5th day of January, A. D. 1877, respectfully shows: That it is true, as these respondents believe, that the said petitioners are creditors of Christopher Zug individually, and have proved their claims respectively in bankruptcy against his separate estate, as alleged in said petition; that it is also true that these respondents were, by the creditors of said bankrupts, duly chosen trustees of the estate of said bankrupts; to take, hold, wind up, settle, and make distribution of the same, under the inspection and direction of a committee of creditors composed of William H. Smith, John Dunlap, and William Clark, who were also duly chosen such committee by said creditors for the purposes aforesaid, and not simply
50 "to inspect and direct the settlement of said estate," as alleged in said petition, and that *both* said trustees the estates and effects of the said bankrupts were conveyed for the purposes aforesaid, and thereupon the said bankruptcy proceedings as to the same were superceded, all of which will more fully appear upon reference to records of said court at No. 2675 in bankruptcy, which are hereby made a part of this answer; that it is also true that said trustees have settled or filed with said committee of creditors final accounts of the joint property or estates of said bankrupts, who composed the firm of Zug & Company, and also of the separate estates of said bankrupts; but it is not true, as alleged in said petition, that the said trustees have caused the said accounts to be allowed, approved, and confirmed by said committee, nor does the same appear to have been so done by the printed circular referred to in, and a copy of which is attached to, said petition; but true it is, however, that said committee have examined, allowed, approved, and confirmed the said accounts, and have passed an order directing the said trustees to pay and distribute the balances shown by said accounts, respectively, to the creditors of said bankrupts, respectively, a copy of which order is attached hereto
51 and made a part hereof; that it is also true, as stated in said petition, that the said petitioners have filed exceptions to said accounts with said committee, which exceptions are still pending before and undisposed of by said committee; that it is also true, as respondents believe, that the joint property of said bankrupts is insufficient to pay in full their joint debts, and that the separate estates of said bankrupts is also insufficient to pay their separate debts; that it is not true, as alleged in said petition, that the said trustees have included in their

account of the stock and property of said copartnership or joint estate the individual estates of said copartners or bankrupts. It is true, however, that the said trustees have included in their account of the joint estate of said bankrupts the proceeds of sale of the Sable Iron Works property, amounting to the sum of one hundred and twenty-nine thousand ($129,000.00) dollars; but these respondents deny that the same belonged to the said copartners or bankrupts individually, as tenants in common, in the proportions of four-fifths to the said Christopher Zug and one-fifth to the said Charles H. Zug, and aver that, on the contrary, the same belonged to the joint or partnership estates
52 of said bankrupts, was so held held and treated by them, and was represented by said bankrupts in their schedules filed in the proceedings in bankruptcy above referred to and made part hereof, to be so owned, held, and treated by them, the said bankrupts, which schedules have remained unobjected to and acquiesced in by all parties interested, including the petitioners ever since the same were filed in said court, as above stated; and the said trustees, in their said account, treated the same as it was so represented, to be held and owned by said bankrupts, viz, as belonging to their joint estates; but it is not true, as stated in said petition, that the said trustees have undertaken in and by their said account to award and distribute the same to the joint creditors of the said copartnership to the exclusion of the petitioners and other individual creditors of the said copartners or bankrupts; and the said trustees further show that they, the said trustees, do not claim to have power to adjudge and determine whether the said Sable Iron Works, or the proceeds thereof, are copartnership property or separate property of the copartners, or to so adjudge and determine conflicting claims of creditors to the estates of said bankrupts; but
53 they do claim that the said committee of creditors have such power under the act of Congress in such case made and provided, so far as to direct these respondents in taking, holding, winding up, settling, and distributing the estates and effects and proceeds thereof of said bankrupts. And they further deny that the said committee are disqualified and incompetent to sit in judgment in such questions, or to act in such matter by reason of any interest as creditors which they may have in the said copartnership or joint estate.

And your respondents further show that under the provisions of the act of Congress in such case made and provided, that upon the superceding of the bankruptcy proceedings as before stated all jurisdiction and control of the estates of the said bankrupts and of the said trustees passed from the said court to the said committee of creditors, who have entire and exclusive jurisdiction and control over the estates of the said bankrupts and of said trustees to inspect and direct them in the taking, holding, winding up, making settlement, and distribution of the said estates, and that no sufficient reason or cause is shown in said petition for resuming the bankruptcy proceedings or jurisdiction over the same by the said court; that the said committee of creditors
54 in the proper exercise of the jurisdiction and duties committed to them have examined, allowed, approved, and confirmed the said accounts of the said trustees, and passed the order for distribution as before stated, affording to all parties interested an opportunity to be heard, as appears by the order and printed circular above referred to, and that such action is binding and conclusive upon the petitioners and all the creditors of said bankrupts.

Your respondents further show that upon the approval and confirmation by the court of the action of the creditors in superceding the

bankruptcy proceedings by arrangement as before stated this court ceased to have any jurisdiction or control over the estates of said bankrupts and all parties interested therein, except as is specifically provided in the act of Congress aforesaid, from which the jurisdiction invoked in said petition is extended.

Wherefore your respondents, further showing that this court has now no jurisdiction or control of the subject-matter or the parties, pray that said petition be dismissed, the rule to show cause therein discharged, the restraining order dissolved, and that they be hence dismissed, with costs, &c.

REUBEN MILLER,
JNO. S. SLAGLE,
Trustees.

55 WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Reuben Miller and John S. Slagle, being duly sworn, says that the facts set forth in the foregoing answer are true, as they verily believe.

REUBEN MILLER.
JOHN S. SLAGLE.

Sworn to and subscribed January 18th, 1879, before
S. C. McCANDLESS,
Clerk U. S. District Court.

In the district court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, bankrupts. } No. 2675. In bankruptcy.

At Pittsburgh, Pa., on the 22nd day of December, A. D. 1876.

And now, the trustees of said bankrupts, having submitted to the undersigned committee of creditors of said bankrupts the foregoing separate final accounts of the joint and separate estates of said bankrupts, showing in the hands of said trustees a balance of $172,102.63 to credit of the joint estate of said bankrupts; to the credit of the separate estate of said Christopher Zug a balance of 36,013.02; to
56 the credit of the separate estate of said Charles H. Zug, a balance of $1,139.62; together with the vouchers for disbursements, &c. And the same having been carefully examined in detail by us, the said committee, the said accounts are hereby allowed, approved, and confirmed; and we do further order and direct the said trustees to pay out and distribute said balances as follows, to wit: Out of the balance standing to the credit of the joint estate *of* the creditors of the joint estate who have proved their debts since the first dividend*s* was ordered, a dividend of ten per cent., the same being the rate of the said first dividend, and a second and final dividend of 32.02 per cent. to all joint creditors who have proved their debts; out of the balance standing to the credit of the separate estate of said Christopher Zug, to all the separate creditors of said Christopher Zug who have proved their debts a first and final dividend 21.446 per cent., and out of the balance standing to the credit of the separate estate of said Charles H. Zug, to all the separate creditors of said Charles H. Zug who have proved their debts a first and final dividend of 5.86 per cent.

And we do further order and direct that the said accounts together with this order shall remain at our office N. W. corner of Third
57 avenue and Wood street, Pittsburgh, Pa., for the inspection of the creditors, until the 18th day of January, A. D. 1877, and if no objections be made thereto in the meantime, or unless otherwise ordered by this committee, the said trustees shall as soon as practicable thereafter, proceed to pay out the dividends herein ordered.

And we do further order and direct that said trustees shall give notice to all the creditors of the said bankrupts who have proved their debts, of the filing and confirmation of said accounts, and the passing of this order, by depositing in the Pittsburgh post-office a written or printed notice according to the form attached to this order, addressed to each of said creditors, at least ten days before said 18th day of January, A. D. 1877.

JOHN DUNLAP.
WM. H. SMITH.
WM. CLARK.

Copy.

From the notice to be sent to the creditors by the trustees (a copy of which is attached to petition),

58 EXHIBIT C.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

I, S. C. McCandless, clerk of the district court of the United States for said district, do hereby certify that the annexed is a true copy of the petition of William Coleman et al., for leave to amend the petition filed on the fifth inst., and order thereon, filed in my office at No. 2675 in bankruptcy.

{SEAL OF THE U. S. DIST. C'T, W. D. OF PA.} Witness my hand and the seal of said court, at Pittsburgh, in said district, this 20th day of January, A. D. 1877.

J. C. McCANDLESS, *Clk.*

59 IN THE MATTER OF CHRISTOPHER AND CHARLES H. ZUG, bankrupts. } No. 2675. In bankruptcy.

And in the matter of the petition in said case of William Coleman et al. filed 5th January, 1877.

And now, 20th January, 1877, the said petitioners by their solicitor, George P. Hamilton, move the court for leave to amend their said petition by making said committee parties respondent with said trustees thereto, and if the prayer of the said petition should be considered too broad, that it be limited to a resumption of jurisdiction for the purpose of deciding and determining whether the said Sable Iron Works is copartnership or individual property, and decreeing distribution of the proceeds thereof accordingly; and also by making part of said petition the following averments, viz:

That by virtue of sundry conveyances, duly recorded in the office for recording deeds, &c., in and for Allegheny County, Penna., the title to the property described in said petition as the Sable Iron Works became vested in said Christopher and Charles H. Zug, their heirs and assigns, in the manner and in the proportions as set forth in said petition, and was so held by them respect*fu*lly at and prior to the said
60 proceedings in bankruptcy, and was also so held by respectively

at and prior to the time when the debts due to your petitioners respectively were contracted.

That in the month of August last, or thereabouts, the said trustees were notified in writing, at the instance of and in behalf of some of said petitioners, that said Sable Iron Works was the individual property of said bankrupts respectively, and that they would claim the proceeds thereof should be distributed accordingly.

That said trustees settled and filed with said committees their said accounts, who er'oneously allowed, approved, and confirmed the same with notice to said petitioners.

WM. COLEMAN,
D. W. C. BIDWELL,
DIAMOND BANK, AND
ALEX. REYNOLDS,
By their Solicitor, GEO. P. HAMILTON.

61 UNITED STATES,
Western District of Pennsylvania, ss:

Before me personally appeared the said William Coleman who, on his solemn oath, says that the matters and things contained in the foregoing amendment are true to the best of his information and belief.

WM. COLEMAN.

Subscribed and sworn to before me this 10th day of January, 1877.
S. C. McCANDLESS, *Clerk.*

And now, 20th January, 1877, the within amendments allowed and ordered to be filed; and it is further ordered that a copy thereof be served on said trustees and committees or their solicitors.

W. W. KETCHAM, *Judge.*

62 EXHIBIT D.

In the district court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, bankrupts. } No. 2675. In bankruptcy.

And now, to wit, came John Dunlap, William H. Smith, and William Clark, committee of creditors of the bankrupts above named, and for answer to the petition filed by William Coleman and others January 5th, 1877, and to which they, the said committee, have since been made parties respondents, say that they, the said committee, adopt for their answer to said petition the answer filed thereto by Reuben Miller and John S. Slagle, trustees in bankruptcy of said bankrupts.

And for further answer to the amended petition filed by said William Coleman and others January 20th, 1877, they, the said trustees and committee, deny that the Sable Iron Works property became vested in the said Christopher Zug and Charles H. Zug, their heirs and assigns, in the manner and in the proportion set forth in said petition by virtue of sundry conveyances duly recorded, &c., as is stated in said
63 amended petition. And they further deny that the same was so held by them, the said bankrupts, at and prior to the said proceedings in bankruptcy, or at and prior to the time when the debts due the petitioners were contracted, as stated in said petition.

They further deny that the said accounts of the trustees were er'oneously allowed, approved, and confirmed without notice to the petitioners. They further deny that in the month of August last or thereabouts the said trustees were notified in writing, at the instance of and in behalf of some of said petitioners, that the Sable Iron Works was the individual property of said bankrupts respectively, and that they would claim the proceeds thereof should be distributed accordingly as stated in said amended petition; but they further say, however, that they, the said Reuben Miller and John S. Slagle, received by mail an inquiry in writing purporting to come from George P. Hamilton, esq., a copy of which is hereto attached and made part hereof, which inquiry was so received prior to the sale of the Sable Iron Works property, and was sufficiently answered by the action of said trustees in filing their said accounts and serving the notices attached to the original petition.

JOHN DUNLAP,
WM. H. SMITH,
WILLIAM CLARK,
Committee.
REUBEN MILLER,
JOHN S. SLAGLE,
Trustees.

64 WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Reuben Miller and John S. Slagle, being duly sworn, say the facts set forth in the foregoing answer are true, as they verily believe.

REUBEN MILLER.
JOHN S. SLAGLE.

Sworn and subscribed this 27' day of January, A. D. 1877.

S. C. MCCANDLESS,
Clerk U. S. District Court.

PITTSBURGH, 29 *July*, 1876.

Messrs. REUBEN MILLER and JOHN S. SLAGLE:

GENTLEMEN: I represent, as their counsel, creditors of C. Zug individually, and would therefore like to be informed what order you propose to take in respect to the distribution of the proceeds of the sale of the Sable Iron Works. My clients, being creditors of C. Zug individually, will insist that they are entitled respectively to be paid first out of his proportion of the proceeds of said sale before any portion of the same are applied to the creditors of the firm of C. Zug & Co.

Respectfully,
(Sig.) . GEORGE P. HAMILTON.

I represent, in connection with other counsel, the following creditors of C. Zug, viz, Wm. Coleman, D. W. C. Bidwell, and Reynolds.

65 EXHIBIT E.

In the United States district court for the western district of Pennsylvania.

M'RS C. AND C. H. ZUG, bankrupts. } In bankruptcy. No. 2675.

Now, April 20th, 1877, it is ordered that Wm. H. Smith, John Dunlap, and William Clark, committee of inspection, and Reuben Miller

and John S. Slagle, trustees of the estate of the said bankrupts, do exhibit and file in this court within thirty days hereafter a just and true account of the estates, joint and several, of said bankrupts, also setting forth the different properties of the said bankrupts and the moneys derived therefrom respectively, with the report of distribution.

Per curiam.

66 EXHIBIT F.

In the circuit court of the United States in and for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, bankrupts. } No. 214. May term, 1877.

Bill praying for a review of proceedings had in the U. S. district court.

And now, July 23rd, 1877, this bill having been heard, &c., it is ordered that the order of the district court complained of be affirmed except in so far as it relates to the committee named therein, as to whom the said order is reversed, and the petition or bill against them is dismissed, and also as to the direction to report distribution, which is stricken out as premature.

By the court.

From the record.

Witness my hand and the seal of the court this 23rd day of May, 1877.

(Signed) H. D. GAMBLE, *Clerk.*

67 EXHIBIT G.

In the district court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER AND C. H. ZUG, bankrupts. } No. 2675.

And now, 29 May, 1877, came William Coleman, D. W. C. Bidwell, Diamond National Bank, and Alexander Reynolds, creditors respectively of C. Zug individually, who, having made due proofs of their claims, except to the accounts of John S. Slagle and Reuben Miller, trustees of said bankrupts—

(1.) For that said accountants have mingled in their said accounts of the joint stock and property of C. Zug & Co., composed of the said Christopher and Charles H., the individual separate estates of said copartners, especially the proceeds of the Sable Iron Works, which at the commencement of said proceedings in bankruptcy belonged to said bankrupts as tenants in common in the proportion of four-fifths to the said Christopher and one-fifth to the said Charles.

(2.) For that the said accountants did not include in their account of the separate estates of said bankrupts respectively the proportion of each in the proceeds of said Sable Iron Works which were owned
68 and held at the commencement of said proceedings by them in the proportions and manner set forth in the preceeding exception.

(3.) For that the alleged allowance, approval, and confirmation of said accounts by said committee of supervision was without authority of law and without previous notice to these exceptants.

And for that it appears from the several assurances of title to the said Sable Iron Works that the same were owned and held at the commencement of said bankruptcy proceedings by the said Christopher and Charles H., not as copartners and for copartnership purposes, but as tenants in common in the proportions stated in the first preceeding exception.

SCHOYER, ACHESON AND HAMILTON,
For Coleman,
AND HAMILTON,
For D. W. C. Bidwell, Diamond N. Bank, and Alex. Reynolds.

The Bank of Pittsburgh as a creditor of Christopher Zug individually, and of Chas. H. Zug individually, adopts the foregoing exceptions and unites in them.

GEO. SHIRAS, JR.,
Att'y for the Bank of Pittsburgh.

William C. Macrum, administrator of John Lindsey, as a creditor of Christoper Zug individually, adopts the foregoing exceptions and unites in them.

J. M. STONER,
Att'y for Macrum, Adm'r, &c.

69 EXHIBIT H.

And now, to wit, July 13th, 1877, this cause came on to be heard on exceptions to said accounts and proofs, and was argued by counsel, and the court being of opinion that the Sable Iron Works belonged to and was owned by, and prior to the commencement of said proceedings in bankruptcy, *by* the said Christopher and Charles H. Zug, as tenants in common, in the proportion of four-fifths to the former and one-fifth to the latter. It is therefore ordered, adjudged, and decreed that the exceptions to said account be and are sustained, and that the account of said trustees of the joint stock or copartnership estate of the firm of C. Zug & Co. be, and is hereby, *is* discharged of and from the sum of one hundred and thirty thousand dollars, proceeds of said Sable Iron Works, and that their said account of the separate estate of said Christopher Zug be surcharged with the four-fifths and that their said account of the separate estate of Charles H. Zug be surcharged with one-fifth of said proceeds, and that the account of said trustees as hereby modified be, and is hereby, confirmed absolutely.

And it is further ordered, adjudged, and decreed that said trustees do distribute and pay out in accordance with this decree the estate of said bankrupts in their hands to their creditors, respectively, who have
proved their claims, unless an appeal be taken from or a bill of
70 review to this decree within the time prescribed by law, and that said trustees do pay the taxable costs of this proceedings out of the joint stock or copartnership estate of said bankrupts.

Per curiam.

Copy.

And now, July 14, 1877, the decree of this court is modified as follows: That the amount of which the account of said trustee of the

joint stock or copartnership estate of the firm of Zug & Co. is ordered to be discharged, to wit, one hundred and thirty thousand dollars, proceeds of the sale of the Sable Iron Works, shall be reduced by the amount of costs and expenses of the trust incident to said property and its conversion unto said fund.

Per curiam.

71 EXHIBIT I.

District court of the United States for the western district of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, bankrupts.	No. 2675. In bankruptcy.

You are hereby notified that a bill in equity, a copy of which is hereto attached, has been filed in the circuit court of the United States for the district above named, at No. 11, May term, 1878, by Reuben Miller, jr., plaintiff, on his own behalf and on behalf of others, partnership creditors of the bankrupts above named, against the undersigned trustees in bankruptcy of the said bankrupts; which suit or action, as will be observed, upon reference to said bill involves and effects your rights and interests as individual or separate creditors of said bankrupts, or either of them. You will therefore come in and defend your rights and interests, or take such action in the premises as you deem proper.

REUBEN MILLER,
JOHN S. SLAGLE,
Trustees.

Answer. Filed April 30th, 1879.

72 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh et al. *vs.* JOHN S. SLAGLE ET AL.	No. 15. May term, 1878.

And now, May 6th, 1879, the plaintiffs join issue with the defendants on the matter set out in their answer.

J. F. SLAGLE,
HAMPTON & DALZELL,
Pl'ffs' Sol'rs.

Filed May 7th, 1879.

73 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank et al. *vs.* JOHN S. SLAGLE AND REUBEN MILLER.	No. 15. May term, 1878.

And now, June 3rd, 1879, it is agreed that the testimony taken before Judge Ketcham, and on file in the district court for western district of Pennsylvania, at No. 2675 in bankruptcy, in the matter of C. and C. H. Zug, bankrupts, shall be used in evidence by either party to this cause

with the same effect as if regularly taken upon notice in the cause, and that the said cause be set down for hearing on bill, answer, and testimony.

J. M. STONER,
Att'y for W. C. Macrum, Adm'r of John Lindsey, dec'd.
GEO. SHIRAS, JR.,
Att'y for Bank of Pittsburgh, Def't.
M. W. ACHESON,
Att'y for Wm. Coleman's Estate.
HAMPTON & DALZELL, AND
SLAGLE & WILEY,
Att'y for Pl'ffs.

Filed June 5th, 1879.

74 In the circuit court of the United States for the western district of Pennsylvania.

MERCHANTS AND MANUFACTURERS' NATIONAL Bank et al. *vs.* JOHN S. SLAGLE AND REUBEN MILLER, TRUSTEES. } No. 15. May term, 1878. In equity.

And now, June 11, 1879, this cause came on to be heard upon bill, answer, and evidence, and argument of counsel, and upon consideration thereof it is ordered, adjudged, and decreed that the said bill be dismissed at the costs of complainants.

By the court.

Filed June 11th, 1879.

75 *Petition for appeal.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh and the Steubenville Furnace and Iron Company, plaintiffs, *vs.* JOHN S. SLAGLE AND REUBEN MILLER, defendants. } No. 15. May term, 1878. In equity.

To the honorable the judges of the Supreme Court of the United States:

The appeal of the Merchants and Manufacturers' National Bank of Pittsburgh and the Steubenville Furnace and Iron Company, the above-named complainants and appellants, respectfully showeth:

That on the 26th day of December, 1877, complainant filed their bill in the circuit court of the United States for the western district of Pennsylvania against the above-named respondents, alleging that complainants, the appellants, were creditors of the firm of Zug & Co., composed of Christopher and C. H. Zug, the Merchants and Manufacturers' National Bank in the sum of $48,419.50, and the St'ubenville Furnace and Iron Company, in the sum of $9,322.15; that said firm of Zug
76 & Co. had filed their petition in bankruptcy in the district court of the United States for the western district of Pennsylvania, and said John S. Slagle and Reuben Miller had been duly appointed

trustees under the provisions of the act of Congress; that among the assets of said firm were the proceeds of the Sable Iron Works, real estate situated in the city of Pittsburgh, amounting to the sum of $129,000; that said district court of the United States, on the 13th day of July, 1877, made an order directing a distribution whereby the assets appearing by the schedule originally filed to be the assets of the firm of Zug & Co., and which were, in fact, the assets of the firm of Zug & Co., were diverted from the creditors of said firm, and ordered to be paid to the creditors of the individual members thereof; and complainant further alleges that said district court had no jurisdiction in the manner assumed to decree a change of the character of said property, and that said John S. Slagle and Reuben Miller threaten to proceed to a distribution of said estate in accordance with said void decree, and praying the court to restrain said John S. Slagle and Reuben Miller from making distribution of the moneys now in their hands, the proceeds of the Sable Iron Works, otherwise than to and among the
77 partnership creditors of the said firm of Zug & Co.; that it be decreed that the order of the district court aforesaid controlling and directing the distribution of the assets of said bankrupts is null and void, and that the said trustees be ordered and directed to proceed in the distribution of said bankrupts' estate in accordance with the account and schedule of distribution prepared by them, which was approved by the committee, and of which the trustees gave notice to the creditors Dec. 22, 1876.

That on the 29th day of December, 1877, leave was granted W. C. Macrum, administrator of John Lindsey, The Bank of Pittsburgh, Wm. Coleman, The Diamond National Bank of Pittsburgh, D. W. C. Bidwell, and Alex. Reynolds, individual creditors of Christopher Zug, to intervene as parties defendant, and accordingly answer bill filed by said parties April 26, 1878, and by said John S. Slagle and Reuben Miller April 30th, 1878, in which it was alleged that said Sable Iron Works was the individual and separate property of said Christopher and Charles H. Zug, and not the property of the firm of Zug & Co., and that said order of the district court of July 13th, 1877, was valid; to which answer appellants filed their replication May 7, 1879;
78 whereupon, by agreement of parties, the testimony taken before Hon. W. W. Ketcham, judge of the district court aforesaid, was to be regarded as filed in this case, and the cause was set down for hearing upon bill, answer, and evidence, and upon the 11th day of June, 1879, the following decree was entered: "And now, June 11th, 1879, this cause came on to be heard upon bill, answer, evidence, and argument of counsel, and upon consideration thereof it is ordered, adjudged, and decreed that the said bill be dismissed at the costs of complainants."

Wherefore these appellants appeal from the whole of said decree and respectfully pray that the bill, answer, pleadings, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court may be reversed and such other decree made as to the said Supreme Court may seem just.

THE MERCHANTS AND MANUFACTURERS'
NATIONAL BANK OF PITTSBURGH,
THE STEUBENVILLE FURNACE AND IRON COMPANY,
By J. F. SLAGLE,
JOHN DALZELL, *Their Att'ys.*

79 WESTERN DISTRICT OF PENNSYLVANIA:

Before me personally appeared W. A. Shaw, cashier of the Merchants and Manufacturers' Bank of Pittsburgh, who, being duly sworn, says that the above and foregoing appeal is not taken for the purpose of delay.

W. A. SHAW.

Sworn and subscribed this 25th day of June, 1879, before me.

H. D. GAMBLE,
Clerk U. S. Cir. C't.

June 25th, 1879, appeal allowed in above-named case by—

W. McKENNAN,
Cir. Judge.

80 *Ass'g'ts of error.*

In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh and the Steubenville Furnace and Iron Company
vs.
JOHN S. SLAGLE AND REUBEN MILLER.

No. 15. May term, 1878. In equity.

ASSIGNMENTS OF ERROR.

1st. The court erred in dismissing complainants' bill.

2nd. The court erred in not sustaining plaintiffs' bill and granting the relief prayed for.

3rd. The court erred in not restraining said John S. Slagle and Reuben Miller, trustees of Zug & Company, bankrupts, from making distribution of the moneys in their hands, the proceeds of the Sable Iron Works, otherwise than to and among the partnership creditors of the firm of Zug & Co.

4th. The court erred in not decreeing that the said order of July 13th, 1877, of the district court in the proceedings in bankruptcy, control'ing and directing the trustees in their account and distribu-
81 tion of the assets of said bankrupts as approved by the committee to be null and void.

5th. The court erred in not ordering and directing said trustees to proceed in the distribution of said bankrupts' estates in accordance with the account and schedule of distribution by them prepared, which was approved by said committee and of which the trustees gave notice to the *au*ditors of said bankrupts on Dec. 22nd, 1876.

And come the Merchants and Manufacturers' National Bank of Pittsburgh and the Steubenville Furnace and Iron Company, complainants below, and appellants, and pray the honorable court to reverse the decree below, for the reason set forth in foregoing assignments of error.

J. F. SLAGLE, AND
JOHN DALZELL,
Att'ys for Pl'ff.

Filed June 30th, 1879.

82 UNITED STATES OF AMERICA,
Western District of Pennsylvania, sct:

To John S. Slagle and Reuben Miller, trustees of Zug & Company, and William C. Macrum, administrator of John Lindsay, dec'd, Thomas M. Carnegie, executor of William Coleman, dec'd, D. W. C. Bidwell, The Diamond National Bank of Pittsburgh, Alexander Reynolds, and The Bank of Pittsburgh, intervening defendants, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday in October next, pursuant to an appeal filed in the clerk's office of the United States circuit court, wherein The Merchants and Manufacturers' National Bank of Pittsburgh, Pa., and the Steubenville Furnace and Iron Company are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this second day of October, A. D. 1879.

WINTHROP W. KETCHAM,
Judge of U. S. District Court, sitting at Circuit.

83 OCT. 2d, 1879.

We hereby accept service of the within citation.

GEORGE SHIRAS, JR.,
Attorney for Bank of Pittsburgh.
M. W. ACHESON,
Att'y for Coleman Estate.
J. M. STONER,
Att'y for W. C. Macrum, Adm'r, &c.
JOHN M. KENNEDY,
Att'y for John S. Slagle and Reuben Miller, Trustees, &c.

And now, October 11th, 1879, served the above citation upon the within-named D. W. C. Bidwell, Alexander Reynolds, and the Diamond National Bank of Pittsburgh, Pennsylvania, by leaving a copy thereof at the residence (in Allegheny) of George P. Hamilton, esq., their attorney of record in the above-mentioned case, with an adult member of his (the said Hamilton's) family.

JOHN HALL, *U. S. Marshal,*
Per R. K. CAMPBELL, *Deputy.*

84 In the circuit court of the United States for the western district of Pennsylvania.

THE MERCHANTS AND MANUFACTURERS' National Bank of Pittsburgh et al.
vs.
JOHN S. SLAGLE AND REUBEN MILLER, TRUSTEES, et al.
} No. 15. May term, 1878.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 26th day of September, A. D. 1879.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above-named was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *September 26th*, 1879.

(Indorsement on cover:) No. 90. The Merchants & Manufacturers' National Bank of Pittsburg and The Steubenville Furnace and Iron Co., appellants, vs. John S. Slagle & Reuben Miller, trustees of Zug & Co., Wm. C. Macrum, adm'r of John Lindsay, dec'd, Thos. M. Carnegie, executor of Wm. Coleman, dec'd, D. W. C. Bidwell, The Diamond National Bank of Pittsburg, Alexander Reynolds, and The Bank of Pittsburg. W. Pennsylvania, C. C. U. S. Filed October 17th, 1879.

IN THE

Supreme Court of the United States.

No. 917

THE MERCHANTS AND MANUFACTURERS NATIONAL BANK OF PITTSBURGH and THE STEUBENVILLE FURNACE AND IRON COMPANY, Appellants,

vs.

JOHN S. SLAGLE and REUBEN MILLER, Trustees of Zug & Co., WILLIAM C. MACRUM, Administrator of John Lindsay, deceased, THOMAS M. CARNEGIE, Executor of William Coleman, deceased, D. W. C. BIDWELL, THE DIAMOND NATIONAL BANK OF PITTSBURGH, ALEXANDER REYNOLDS, and THE BANK OF PITTSBURGH.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

PAPER BOOK OF APPELLANTS.

HAMPTON & DALZELL,
SLAGLE & WILEY,
Attorneys for Appellants

Jackson & McEwen, Print., 49 Wood Street, Pittsburgh.

IN THE

Supreme Court of the United States.

No. 90

THE MERCHANTS AND MANUFACTURERS NATIONAL BANK OF PITTSBURGH and THE STEUBENVILLE FURNACE AND IRON COMPANY, Appellants,

vs.

JOHN S. SLAGLE and REUBEN MILLER, Trustees of Zug & Co., WILLIAM C. MACRUM, Administrator of John Lindsay, deceased, THOMAS M. CARNEGIE, Executor of William Coleman, deceased, D. W. C. BIDWELL, THE DIAMOND NATIONAL BANK OF PITTSBURGH, ALEXANDER REYNOLDS, and THE BANK OF PITTSBURGH.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

STATEMENT OF THE CASE.

On March 11, 1876, the firm of Zug & Co., composed of Christopher Zug and Charles H. Zug, filed a voluntary petition in bankruptcy in the District Court of the United States for the Western District of Pennsylvania, and the firm and its members were thereupon adjudged bankrupt.

Among the property set out in the schedules appeared "The Sable Iron Works,"—*returned as partnership property.* Those works covered about a square of ground in the city of Pittsburgh, and, as appears by the subsequent proceedings of the case, were purchased out of partnership funds for partnership

purposes. They were always used and regarded as firm assets by the partners themselves.

At the first meeting of the bankrupts' creditors, held April 7th, 1876, a proposition of composition submitted by the bankrupts was rejected.

The creditors then agreed that the bankruptcy proceedings should be superseded by a trustee arrangement, under section 43 of the bankrupt act; and Reuben Miller and Jno. S. Slagle were chosen trustees, and John Dunlap, William Clark, and Wm. H. Smith, a committee. To these trustees the bankrupts made conveyance of their assets as defined in the schedules filed.

The Court approved the arrangement, and made an order staying the bankruptcy proceeding.

The trustees entered upon the execution of their trust. They converted the entire estate into money. Assuming that to be partnership property which was so called in the schedules, they declared and paid one dividend of ten per cent.

Proceeding further to wind up, settle, and distribute the the estate, they prepared a final account, submitted it to the committee, by whom it was examined, approved, and confirmed (and a distribution ordered), and then gave notice to the creditors of a final dividend of 32.07 per cent. to the joint creditors, 21.446 per cent. to the separate creditors of Christopher Zug, and 5.89 per cent. to the separate creditors of C. H. Zug.

In this fund for distribution among the partnership creditors was some $130,000, realized from the sale of the Sable Iron Works.

Upon receiving notice of the final dividend, William Coleman and three others, creditors of C. Zug, individually, filed exceptions with the committee to the accounts as allowed. These exceptions were in substance, that the account based on the correctness of the schedules was erroneous, because the Sable Iron Works property, instead of being partnership property, was in point of fact (as they alleged) the property of C. Zug as to four-fifths thereof, and of C. H. Zug as to one-fifth. Pending the consideration of these exceptions by the committee, viz., on January 5, 1877, the exceptants presented a petition to the District Court, embodying the same subject matter as their ex-

ceptions, and praying the Court "to continue, or resume and continue jurisdiction over said bankruptcy proceedings, and to order said trustees to exhibit and file in court just and true accounts of the estates, joint and several, of said bankrupts, to the end, that the same might be duly audited and the estates of said bankrupts marshaled and distributed in due course and according to law."

The Court thereupon granted a rule on said trustees to show cause why the prayer of the petitioners should not be granted. In response to said rule the trustees filed an answer, in which they denied any mingling of the separate estates and the partnership estate of the bankrupts, admitted the proposed distribution of the proceeds of the Sable Iron Works to the partnership creditors, asserted the partnership character of said works as appeared by the schedules, to which no one had objected, and asserted also the right of the committee to pass upon the questions presented, free from any control by the Court, whose jurisdiction had been superseded by the trustee arrangement.

Two days after the filing of this answer the petitioners were allowed by the Court to amend their proceeding, by making the committee party thereto.

The committee answered, adopting in the main the answer of the trustees. To these answers the petitioners filed a general replication.

On April 20, 1877, the Court ordered the trustees and committee to file their account in court.

On a review of this action, at the instance of the trustees and committee, the Circuit Court affirmed the order as to the trustees, but dismissed the petition as to the committee.

On May 28, 1877, the trustees filed their account in the District Court, and thereupon the exceptants before the committee renewed their exceptions in court.

Testimony was then taken for and against the exceptions in open court.

On June 12, 1877, the Court ordered the clerk to give notice, by circular, to the creditors of the filing and confirmation *nisi* of the report, and that it would be confirmed absolutely, unless exceptions were filed on or before June 25.

The first exceptants then renewed their exceptions.

After argument the Court made an order on July 13, 1877, sustaining the exceptions, discharging the account of the trustees of the joint estate of the amount realized from the sale of the Sable Iron Works, and surcharging the separate accounts therewith—four-fifths to the account of one partner, and one-fifth to that of the other.

The Court further "ordered, adjudged, and decreed that said trustees do distribute and pay out, in accordance with this decree, the estate of said bankrupts, in their hands, to their creditors, respectively, who have proved their claims, *unless an appeal be taken from*, or a bill of review to this decree, within the time prescribed by law."

From this decree Reuben Miller, Jr., and Nimick & Co., on their own behalf, and on behalf of other joint creditors of the bankrupts, took and perfected an appeal to the Circuit Court within ten days.

This appeal the petitioners and exceptants in the District Court moved to quash on the ground that the proceeding was was not reviewable by appeal. This motion the Circuit Court allowed, saying: "an appeal is allowable only from a final decree of the court in a suit in equity instituted by or against an assignee in bankruptcy where the sum in controversy exceeds five hundred dollars. As the record does not show that the order complained of was of that character, or was made in any such suit, no appeal lies from it, and the motion to quash is therefore allowed."

From this decision, an appeal was taken to this Court, which, on motion, was quashed, the case being reported in *5 Otto, p. 268*—Nimick vs. Coleman.

In that case this Court said:

"If, as is claimed, the District Court acted without jurisdiction, or in a manner not to bind the parties, its decree as made was void, and the aggrieved partnership creditors may very properly consider whether they cannot proceed in equity to call the trustees to a proper accounting and distribution."

Acting upon this suggestion, complainants filed their bill in this case, in which they, in formal manner, and at length set

forth the facts as above stated, the want of jurisdiction in the District Court to control the action of the committee of creditors, and praying that the trustees might be restrained from distributing the funds in their hands, other than as ordered by said committee.

Certain individual creditors of Christopher Zug, upon their own motion, became parties to this proceeding, and filed answers to plaintiffs' bill. Answer was also made by the trustees. It was agreed by counsel that the testimony taken before Judge Ketcham should be used in this case, as if regularly taken for that purpose. The case was then heard on bill, answer, and evidence, and, after argument by counsel, the bill was dismissed.

This appeal was then taken.

ARGUMENT FOR APPELLANTS.

The facts of this case, so far as they are material to the present consideration, are briefly as follows:

Prior to August 30, 1864, the firm of Zug & Painter, composed of Christopher Zug, Charles H. Zug, Jacob Painter, and Byron H. Painter, were engaged in the manufacture of iron in the City of Pittsburgh, owning two mills, one of them known as the Sable Iron Works, which had been conveyed to the partners in the firm name. On that day the firm was dissolved, and, in division of the assets, the Sable Iron Works was conveyed to Christopher Zug as part of the shares of himself and Charles H. Zug, in the firm of Zug & Painter. Upon the dissolution of the firm of Zug & Painter, the firm of Zug & Co. was formed, composed of Christopher and Charles H. Zug, the capital of which was the assets derived from the firm of Zug & Painter, and their several interests being four-fifths to Christopher and one-fifth to Charles H. Zug. Afterwards other real estate was bought, some conveyed to Christopher, and some to C. and C. H. Zug.

By deed dated March 20, 1867, Christopher Zug conveyed to Charles H. Zug the undivided fifth part of all the property known as the Sable Iron Works, which deed was duly recorded in Allegheny County, March 22, 1867.

On the 1st day of September, 1865, the said Christopher and Charles H. Zug entered into an article of agreement in which they set forth the interest of each in the assets of said firm, including the real estate, which was declared to be partnership stock.

The real estate received from the firm of Zug & Painter constituted the principal part of the assets of the new firm of Zug & Co., and was carried on the firm books as capital stock. All the real estate subsequently purchased was paid for out of firm moneys, as was also the cost of new buildings and machinery, and the repairs of the old, the property was assessed in the firm name; the taxes and insurance paid by the firm, it was used exclusively for partnership purposes, and was essential to the business of the firm, it was regarded by the partners as firm assets, and reported by one of them to the Commercial Agency as firm property.

The firm of Zug & Co. filed their petition in bankruptcy March 11, 1876, in the District Court of the United States for the Western District of Pennsylvania, at No. 2675, and were duly adjudicated as bankrupts. In their schedules the Sable Iron Works were returned as partnership assets.

At the first meeting of creditors, April 14, 1876, the defendants, John S. Slagle and Reuben Miller, were duly appointed trustees of the estate of said bankrupts, to take hold, wind up, settle, and make distribution of the same, under the inspection and direction of William H. Smith, John Dunlap, and William Clark, who were also duly chosen by said creditors as a committee for that purpose, in pursuauce of the 43d section of the Act of Congress, revised statutes, section 5103; which action of creditors was duly approved by the District Court.

The trustees having disposed of the Sable Iron Works, and all other assets of said C. and C. H. Zug, made out their final accounts of the co-partnership and individual estates of said bankrupts, which were submitted to said committee, and

by them duly approved December 22, 1876; and thereupon said committee directed a distribution to be made to the several creditors, as shown by their order found on page 20 of the printed record in this case.

On the 5th day of January, 1877, certain creditors of Christopher Zug presented their petition to the District Court, upon which proceedings were had which resulted in the order of said Court of July 13, 1877, directing that the co-partnership accounts be discharged of the sum of $130,000, being proceeds of the Sable Iron Works, and that the individual accounts be surcharged therewith,—the account of Christopher Zug with four-fifths, and the account of Charles H. Zug with one-fifth, and that the trustees distribute the funds in their hands accordingly. [A copy of this order will be found on page 25 of the printed record.]

It is of this order we complain. We claim that the trustees have no right to transfer the proceeds of the sale of the Sable Iron Works from the account of the co-partnership of C. Zug & Co., and pay the same to the individual creditors of the co-partners:—

1st. Because the committee appointed by the creditors, under the provision of the Act of Congress, had full jurisdiction of the matter, and having decided, their judgment was conclusive:

2d. The District Court, in making the order of July 13, 1877, acted without jurisdiction:

3d. If the District Court had any jurisdiction in the matter, it could not be exercised in a summary manner, and the order made is therefore null and void:

4th. The real estate known as the Sable Iron Works was, in fact and in law, partnership assets of the firm of C. Zug & Co., and the proceeds of the sale thereof belonged in equity to the partnership creditors, and therefore the order of the District Court transferring them from the partnership account, and directing their distribution to the individual creditors, was arbitrary, unauthorized, and void.

Their is no question suggested as to the legality and formality of the appointment of the trustees and committee, nor is there any dispute as to the regularity and good faith of their proceedings. It is true that in the answer of the intervening creditors, it is stated that the committee had largely preponderating interests as partnership creditors; that one of the trustees was a member of a firm which had similar interests, and the other was the son of a partnership creditor. But this can be no bar to their right to act in view of the fact that the Act of Congress requires that the committee should be selected from the *creditors*, and there is no allegation of actual fraud in their action.

The power of the trustees and committee is indicated by the Act of Congress granting to the creditors authority "*to nominate one or more trustees to take hold and distribute the estate under the direction of such committee.*"

Though the winding up and settlement of the estate are declared to be proceedings in bankruptcy, it still leaves the power of the trustees full and complete to dispose of the assets and *distribute* the proceeds directed by the committee and controlled by it alone.

The control of the distribution having been entrusted by law to the committee, it follows that no other authority can interfere, except so far as may be prescribed, and in the mode designated by law. No such authority has been conferred upon the District Court.

The power of the committee and the want of jurisdiction in the District Court to control its exercise was considered by Justice Strong, in the case of Jay Cooke & Co., *11 Nat. Bank Reg., 15–20.*

His Honor there points out the distinction between the mode of settling a bankrupt's estate, prescribed by the 27th and 28th sections of the Act, and that prescribed by the 43d section. He notices the fact that under the former "very large powers over the winding up, settlement, and distribution of a bankrupt's estate are given to the District Court, and to a majority in value of the creditors who may be present at a general meeting." He then goes on to say:

"But the 43d section prescribed another system, the obvious purposes of which were to arrest the ordinary mode of proceeding to wind up, settle, and distribute a bankrupt's estate, to suspend some of the powers conferred upon the District Court, and to confer upon the representatives of the creditors authority not to be exercised by the general body. The system was extraordinary. It was borrowed from a system which had previously existed in Scotland and in England, *which had for its object the withdrawal of the bankrupt's estate from the Courts in certain cases, and placing its administration in the hands of the bankrupt himself, or in that of the chosen representatives of the creditors.*

An examination of the provisions of that section shows very clearly that such was its object, and that the powers conferred thereby are inconsistent with the continued existence of the powers given by the 27th and 28th sections. It is entitled, 'of *superseding* the bankrupt proceedings by arrangement.'

* * * * * * * * * *

If, when, three-fourths in value of the creditors who have proved their debts have resolved that the estate shall be wound up, settled, and distributed under the direction, *not of the court* or the general body of creditors, but of a committee chosen by them, and their resolution has been confirmed by the court, and when consent to such an administration has been filed, *either the court* or a general meeting of creditors can control the discretion thus vested in the committee; * * * how does the manner of administering the estate differ in substance from the ordinary manner presented in the 27th and 28th sections? What becomes of the power of the committee to direct the settlement and distribution?"

Consistent with this mode of reasoning, it was the decision *In re.* Jay Cooke & Co. that the direction of the committee to the trustee was conclusive, and not the subject of control *either by court or creditors.*

But there is a special reason, in the case at bar, why the court had no jurisdiction to interfere. The bankruptcy proceedings were suspended by arrangement, *upon the faith that the estate would be distributed as it was by the trustees and committee.*

The schedules filed by the bankrupts disclosed the fact that the Sable Iron Works, the bone of contention, were the partnership property of the bankrupts, distributable under the Act to their partnership creditors.

The correctness of these schedules, sworn to by the bankrupts, and constituting the basis of the proceedings, stood unchallenged up to the time that the trustee arrangement was made, and until long after the first dividend had been declared and paid. Upon the basis of the correctness of these schedules the estate was administered, assets all converted, an account filed by the trustees, approved by the committee, and a distribution ordered accordingly.

Upon the basis of these schedules three questions were presented to the creditors: 1. Shall the estate be administered in the ordinary mode under sections 27 and 28? 2. Shall it be administered under a composition proceeding [Section 17, Act of June 22, 1864]? 3. Or, shall the proceedings be superseded by a trustee arrangement under section 43?

Assuming the correctness of the title, as stated in the schedules, the creditors, at a meeting duly called, negatived the first two questions and affirmed the third.

Non constat, that had the title to the Sable Iron Works been declared to be in the individual, and not the partnership, creditors, any such arrangement would have been accepted. *Non constat*, that the bankrupts' offer of composition would have been rejected. *Non constat*, but that an assignee would have been selected to settle the estate and distribute it *under the direction of the court.*

Upon the faith of these schedules, as filed, the bankrupts hung their hope of a discharge by the payment of 30 per cent. of their indebtedness. It is now proposed to so alter their assets that the partnership creditors cannot, by any possibility, receive anything like that amount.

Having lost jurisdiction by the act of three-fourths in number and value of the bankrupts' creditors, could that jurisdiction be resumed upon the application of three or four?

Could it be resumed on the application of three or four, who, having had their day in court, admitted (by not denying)

the correctness of the bankrupts' schedules, and upon whom the trustee arrangement was, by the provisions of the bankrupt act, conclusively binding?

Pursuant to the solemn action of the creditors, the bankrupts' whole estate was assigned to the trustees, and the title they took was in law and in fact that set out in the schedules.

All parties in interest being in court when the trustees arrangement was confirmed, the trustees' title to the Sable Iron Works, as the property of the bankrupts' partnership creditors, was adjudicated.

We do not deny that a court of competent jurisdiction could, by proper proceedings, restrain an illegal, unjust, or fradulent disposition of the assets of bankrupts by the trustees and committee. It was so held in Jay Cooke's case, *supra*. But we deny that the District Court has any such power, and if it had, we claim that it could not be exercised in the summary manner adopted in this case.

If the trustees, with or without the sanction of the committee, were about to do an illegal or fradulent act, a court of equity has the power to restrain them, upon the application of any creditor interested. If the District Court had jurisdiction of the matter, it could only be exercised by bill. There was no reason why it should not have been so exercised.

The parties to the trustee proceeding were the bankrupts and their creditors. The parties to the proceeding of which we complain were the trustees and certain of the creditors. The subject matter of the proceeding was the trustees' title. No language could more precisely and accurately describe the situation than that of Swayne, J., in Lewis, Trustee, vs. the United States, *2 Otto, 618:* "The case presented is that of a trust fund, a trustee holding and a *cestui qui trust* claiming it."

Did such case present in any proper sense any of the features of a suit in bankruptcy?

It certainly did not call for a motion to be made or an act to be done in the bankruptcy court in the progress of the cause. The cause had been finally ended, *superseded* by the action of the creditors themselves. By the joint action of all in interest, the

court approving, the trustees took title. An inquiry into that title, at the instance of a party claiming adversely to the trustees, was not a proceeding in the bankruptcy cause, simply because the claimant was a creditor in that cause. To adopt again the language of Swayne, J., in Lewis, Trustee, vs. United States, *supra:* "That the fund arose and the trustee was appointed under the bankrupt act did not affect the right of the United States to pursue both by the exercise of the jurisdiction invoked. The same remedies are applicable as if the fund had arisen and the trustee had been appointed in any other way."

We invite the attention of the court to the bearing of the decision in the case cited upon the case at bar. In the former, Lewis was trustee of the estate of Jay Cooke & Co., bankrupts, selected and acting under the same section of the same act as that under which the trustees in this case were chosen and acting. In that case, as in this, the bankruptcy proceeding had ended, been superseded. In that case, as in this, a creditor claimed adversely to the ruling and decision of the trustee and committee. In that case the remedy invoked was *by bill in equity in the Circuit Court.* That remedy this court sustained. If it was the proper remedy there, the remedy of the appellees was improper here. If, by the selection of the *proper* remedy, the rights of parties may be passed upon by this court, can a party deprive his adversary ef his right to the judgment of this court by the institution of *improper* proceedings? Can form prevail against substance? Can an erroneous judgment of the lower court bid defiance to correction because improperly rendered under shield of a form of proceeding from which the law provides no appeal? That would indeed be a wrong without a remedy, brought about by a very simple device.

It is material to be noted that in the selection of remedies and the choice of proceedings the appellants had no voice. They had been from the beginning of the proceeding on the defensive, never on the attack. No necessity existed for any movement on their part to secure what they claim to be the proper distribution of the bankrupts' estate. The schedules defined the bankrupts' title as appellants claimed it to be. All the creditors entered into the trustee arrangement on the assumption

that that title was as stated. The trustees took title in that way; they administered the estate and filed their final account with the committee consistently therewith, By that account the appellants were entitled to take the property of which the decree of the court below now deprives them. The trustees and the appellants were of one mind, occupied one ground, and those who initiated the proceeding attacked both. The only voice the appellants had was by protest and defence. They are in no wise answerable for the shape of the proceeding.

There are other cases which support the principle of the Lewis case.

In Smith vs. Mason, assignee, *14 Wallace, 419*, an assignee, in bankruptcy undertook, by summary process, under the first section of the bankrupt act, to settle his title to property of the bankrupt claimed adversely by an outside party. But this court held that it was a case which could not be disposed of by summary proceeding.

In Marshall vs. Knox, *16 Wallace, 555*, an assignee in bankruptcy undertook by summary process in the bankruptcy proceeding, to take out of the hands ef the sheriff certain property by him held under a distress for rent.

The sheriff appealed from the action of the District Court, but his appeal was not allowed. He then filed a bill for an injunction in the Circuit Court. This court held, (1), That the bill could not stand as an original bill if the District Court had jurisdiction to proceed as it did, for the matter had already been adjudicated in that court; (2), That if it could stand as a bill for a review, then no appeal from the Circuit Court would lie; but, (3), This court then went on to say: "This appeal, therefore, must be dismissed, *unless it can be shown that the District Court proceeded without jurisdiction.* If this were the case, then the bill may be regarded as an original bill, of which the Circuit Court clearly had jurisdiction, and the appeal to this Court was properly taken."

So again in Stickney, assignee, vs. Wilt, *23 Wallace, 150*, it was held that a proceeding commenced in the District Court by petition, by an assignee in bankruptcy, to invalidate certain alleged liens, and to obtain an order of sale of the bankrupts'

property was "a case in equity within the eighth section of the bankrupt act, which gives an *appeal* to the Circuit Court in all cases in equity, and was not a case for the general superintendence and jurisdiction by that court, given in the second section of the act, in cases where no provision for the supervision of the Circuit Court is otherwise made."

It was there held that the Circuit Court could have jurisdiction of the proceeding only *by appeal*, and its decree made under a petition for review was reversed.

If the District Court acted without authority or in a mode unauthorized by law, its action would be void. Matthewson vs. Sprague, *1 Curtis, 457.* Elliott vs. Piersol, *1 Pet. 340.* But if its order was right and proper, and the objection was merely technical, it might be that this court would not feel bound to restrain the trustees from acting under it. It, therefore, becomes proper to inquire as to the correctness of the conclusion of the District Court upon the question in dispute.

The facts relating to the property known as the Sable Iron Works, under the rule as held in England and the United States, whether by State or Federal Courts, constitutes it partnership assets for payment of debts and all other partnership purposes.

Parsons on Partnership, 363.
Collyer on Partnership, sec. 135.
1 Leading Cases in Equity, 240 et seq.
Tillinghast vs. Champlin, *4 R. I., 173, 188.*
Buchan vs. Sumner, *3 Barn., Ch., 198.*
Hoxie vs. Carr, *1 Sumner, 182.*
Bispham's Equity, 511, 513.

It is claimed, however, by the defendants that a different rule prevails in Pennsylvania, where it has been held that, in order to bring real estate into partnership as firm assets, the intention so to do must be manifested in writing, duly recorded, and that under the deed of Christopher Zug to C. H. Zug, the property was held by them as tenants in common, and must be distributed to their individual creditors.

The decisions of the Supreme Court of Pennsylvania upon this subject have not been consistent, and, in our judgment, do not cover this case.

It becomes important to enquire what has been decided in Pennsylvania.

In McDermott vs. Lawrence, *7, S. & R., 437*, the question at issue was whether, when property is held by partners as tenants in common, and one partner mortgages his interest without notice, the mortgagee took subject to partnership debts. The mortgagee in this case was protected by the recording acts and the *dictum* of Judge Tilghman. "When it is the intention of partners to bring real estate property into the common stock, it would be prudent to put the agreement on record, in order that purchasers may not be deceived," was not necessary to a decision of the case, and is not announced as a governing principle.

In Hale vs. Henry, *2 Watts, 143*, Hale purchased at Sheriff's sale, upon a judgment against Capp, the undivided half part of a lot of ground conveyed to Capp & Henry as tenants in common. In proceedings to dispossess Henry, it was held that parol evidence of the ownership as partnership stock could not be given, and the Court adopt as a principle the suggestion made by Judge Tilghman in McDermott vs. Lawrence.

The question in that case was as to the effect of a judgment as a lien.

The Court arrive at the principle through analogy to the recording acts and the statute of frauds, but do not claim that the case is within either; and that it is not is expressly admitted in subsequent cases.

In Lancaster Bank vs. Myley, *1 Harris, 544*, Judge Coulter says: "It is also true that when parties intend to bring real estate into a partnership stock, such intention must be manifested by writing placed on record. Because, under the statute of frauds, all contracts respecting real estate must be in writing."

But in this case it was held that the intention was sufficiently manifested by the fact that the property was purchased at Sheriff's sale, and the Sheriff's deed recited a sale to, and receipt of the purchase money from, Holmes, Myers & Co., notwithstanding the conveyance was to the partners by name.

This was a case of distribution among lien creditors, and the doctrine announced by Judge Coulter was not necessary to a decision of the case.

Ridgeway, Budd & Co. Appeal, *3 Harris, 177*, was also a distribution among lien creditors. The Court held that, as the property was conveyed to the partners as tenants in common, it was not competent to prove by parol that it was partnership assets, as against a creditor who had obtained judgment against the members of the firm.

Cumming's Appeal, *1 Casey, 269*. The question was as to the lien of a judgment against a firm upon the real estate of one of the partners, and it was held that, being prior in time, it must be preferred to a judgment for the individual debt of the owner, "because a lien attached by law is never interfered with by introducing an equitable rule for marshaling assets."

McCormick's Appeal, *7 P. F. S., 54*, and Lefevre's Appeal, *19 P. F. S., 122*, were cases in which a title was held by one partner, who afterwards agreed to take other persons into the firm, and when they had paid their shares the property to become partnership stock. This was an executory agreement, and clearly within the statute of frauds.

In Ebbert's Appeal, *20 P. F. S., 79*, the question arose upon distribution of proceeds of Sheriff's sale, as between Ebbert having judgment, vs. Maclind, for balance of partnership account, and an individual creditor of Maclind, whose judgment was prior in date.

Judge Agnew admits that the case is not within the recording acts or the statute of frauds, but places the decision upon the general principle that to allow parol proof to contradict the record would be a fraud upon creditors, and also upon the principle "*Stare decisis.*"

Appeal of the Second National Bank of Titusville, *2 Norris, 203*, simply adopts the decision in Ebbert's Appeal, and is also a case of distribution among lien creditors.

These cases, then, decide, 1st, That parol evidence is not admissible to show that a title taken in the name of partners as tenants in common is partnership property, as against a mortgagee without notice.

McDermott vs. Lawrence, *7 S. & R., 437*.

As against a purchaser at Sheriff's sale.

Hale vs. Henry, *2 Watts, 143*, as against lien creditors.

Ebbert's Appeal, *20 P. F. S., 79.*

Appeal of 2d Nat'l Bank of Titusville, *2 P. F. S., 203.*

Ridgeway, Budd & Co. Appeal, *3 Harris, 177.*

There is no case in Pennsylvania which has applied this principle to the case of distribution of an insolvent estate.

On the contrary, there are many cases which seem to modify and restrict the rule as laid down in the cases cited.

In Kramer vs. Arthur, *7 Barr, 165*, it was held that real estate purchased in the name of one partner for sale, is not bound by a judgment for his separate debt, though it is bound by a judgment for a partnership debt.

In Moderwell vs. Mullison, *9 Harris, 257*, Judge Woodward says: "When real estate is brought into the partnership business, it is treated in equity as personal estate."

In Overholt's Appeal, *2 Jones, 222*, the proceedings for distribution were reversed, for the reason that the Court refused an issue to try the question whether real estate was partnership property, and a joint judgment a partnership judgment.

Coder & Peterman vs. Huling, *3 Casey, 84*, was a purchase of lands with partnership funds, but not for partnership purposes, in the name of one partner. Held that he was trustee for his co-partner for one-half.

In Erwin's Appeal, *3 Wright, 535*, it was held that real estate purchased in name of Jacob Myers with partnership funds of Imhoff & Myers, and used for partnership purposes, was partnership property, and upon sale the proceeds were distributable to a judgment against the firm in preference to one against Imhoff prior in time.

In North Penn'a Coal Co.'s Appeal, *9 Wright, 181*, in distribution of proceeds of lands sold by the assignee of White, Stevens & Co., the title of which was in James Stevens, distribution was made to the partnership creditors in preference to the vendor who held the bond and mortgage of Stevens for another tract sold at the same time, and which had been sold on a prior mortgage, without producing sufficient to pay the mortgage of Stevens.

In Abbott's Appeal, *14 Wright, 234*, real estate was held by partners as tenants in common, but upon sale of the property

upon a mortgage, it was held that, as between the executors of a deceased partner and the surviving partners, the latter were entitled to the surplus.

Lacy vs. Hall, *1 Wright, 353*, was an ejectment by one partner, who held the title, to enforce payment of purchase money. Held that it was partnership stock, and ejectment would not lie.

The cases relied upon by defendants can possibly be sustained. The 1st and 2d by reference to the recording acts which protect purchasers and mortgage creditors; the 3d by the principle stated in Cumming's Appeal that "a lien attached by law is never interfered with by introducing an equitable rule for marshaling assets."

To carry the principle beyond this would be to go farther than the Courts of this State have gone, and would lead to greater difficulties and more decided conflict with well established principles of our own and other Courts.

It would disregard the cases which hold that our recording acts protect purchasers and mortgagees, without notice, and do not protect creditors.

Rodgers vs. Gibson, *4 Y., 111.*
Huston vs. Fortner, *2 Binney, 40.*
Cover vs. Black, *1 Barr, 493.*
Stewart vs. Freeman, *10 H., 123.*

The exception to the statute of frauds, *Purdon, 724*, which protects trusts arising by implication of law, which are admitted by the courts of Pennsylvania to arise where lands are purchased with partnership funds for partnership purposes.

Kramer vs. Arthur, *7 Barr, 165.*
Overholt's Appeal, *2 Jones, 222.*
Erwin's Appeal, *3 Wright, 535.*
North Penn'a Coal Co.'s Appeal, *9 Wright, 181.*
Abbott's Appeal, *14 Wright, 234.*
Lacy vs. Hall, *1 Wright, 352.*

And the exception to the statute of limitations as to resulting trusts which take out of its provisions those cases in which the *cestue qui trust* has possession while the statute is running.

Willard vs. Willard, *6 P. F. S., 119.*
Douglas vs. Lucas, *13 P. F. S., 9.*

But if we concede, for the purpose of the argument, that the principle claimed by the defendants is established by the Supreme Court of Pennsylvania, it is clearly opposed to the decision of all other Courts in the United States and England, and the question arises, are the Courts of the United States bound to depart from the general law of the land, and follow the rules adopted by the Courts of the State?

There are but three cases in which the Federal Courts adopt and follow the decisions of the State Courts: 1st. Upon questions involving the construction of the constitution of the State. 2d. Upon questions involving the construction of Statutes of the State. 3d. Upon questions involving title to lands in a State.

It is clear that in this case there is no question involving the Constitution or Statutes of the State of Pennsylvania, and, in our judgment, it does not involve the title to land.

The title was conveyed by the bankrupts to the trustees, and by them to the purchasers at their sale. No one questions their title. It has passed irrevocably, and the decision of this case in no way affects it.

Under the evidence in this case, there can be no question that the property was in fact the property of the firm. It was bought with firm funds; carried on the books as firm stock; was used for partnership purposes, and regarded by the members of the firm as partnership assets. A partnership has no existence as a person, and the title to its property must vest in the individual partners. It must, therefore, be held in trust, whether in the name of one or all the partners; whether the trust be expressed or implied. The question in this case, therefore, is not what was the actual character of the estate, but whether the fact that the record title is in the name of the individuals will preclude any inquiry as to the equitable title of the owners or partners.

It, therefore, becomes simply a question of evidence.

As before stated, it is not a question directly affecting the title to the lands, but is a question arising upon distribution of the assets of an insolvent estate, which can only arise after the title has passed; and it is, moreover, a question of *equitable* distribution.

It is also a question of bankruptcy in which it is important that the practice and principles should be, if possible, uniform throughout the United States.

The authorities are numerous which show that the Federal Courts are not bound to follow the State Courts in any such cases.

They are only bound by the decision of the State Courts upon the point in controversy, and not by their opinion upon incidental questions.

Carroll vs. Carroll, *16 How, 275-286.*
Ottowa vs. Perkins, *4 Otto, 260.*

They are not bound by a decision upon a question of general equity.

Neves vs. Scott, *13 How, 268.*
Flagg vs. Mann, *2 Sum, 491, 544, 554.*
Mayer vs. Foulkrod, *4 W. C. C. C., 349.*
McFarland vs. Griffith, *4 W. C. C. C., 585-587.*
Russell vs. Southard, *12 How, 139-147.*

Nor upon a question of a general or commercial nature.

Austin vs. Miller, *5 McLean, 153.*
Austin vs. Miller, *13 How, 218.*
U. S. vs. Howland & Allen, *4 Wheats, 408.*
Livingston vs. Story, *9 Pet, 632.*
Zackens vs. Turner, *6 Pet, 657.*
Russell vs. Southard, *12 How, 139.*
Oates vs. National Bank, *10 Otto, 239.*

~~Hampton & Dalzell,~~
~~Sleigh & Wilby,~~
Attorneys for Appellants.

John Dalzell
J. H. Sleigh

APPENDIX.

IN THE

District Court of the United States

FOR THE

Western District of Pennsylvania.

IN THE MATTER OF CHRISTOPHER ZUG AND CHARLES H. ZUG, Bankrupts.	No. 2675. In Bankruptcy.

Exceptions on the part of William Coleman, et al. to the accounts of John S. Slagle and Reuben Miller, trustees of the estate of the said bankrupts.

Depositions of witnesses produced, sworn, and examined this eighth day of June, 1877, at 3 o'clock P. M., in pursuance of an order issued out of said court on the thirty-first day of May, 1877, to be read on the hearing of the said exceptions.

PRESENT: Geo. P. Hamilton, Esq. for William Coleman et al.; J. M. Stoner, Esq., for Macrum et al., and Jno. M. Kennedy, Esq. and J. F. Slagle, Esq., for trustees.

DEEDS: Jacob Painter and wife to C. Zug, dated August 3, 1864, recorded in Deed Book vol. 175, page 163, recorded August 17, 1864, for the one undivided half of a parcel of ground in N. Lib., Pittsburgh, comprising lots No. 69 and 70 in Bayard's plan, having thereon rolling mill and buildings appurtenant thereto; also, certain other parcel of ground, situated

as above, comprising lots No. 50 and 51, and part of lot No. 49 in said plan, together with all the engines, patterns, tools, fixtures, etc.; also, one other certain lot situated as aforesaid, being No. 52 in said plan; also, lot No. 71 in said plan. Consideration, $67,500.

James Graham and wife to same, dated August 13, 1864, recorded August 15, 1864, in Deed Book vol. 174, page 501, for certain lot of ground in said city, beginning on the southern side of Etna street, 46 feet from the corner, lot 47 and 48, the same being part of lot 49 and lot 48 in said plan. Consideration, $6,000.

Jacob Painter and wife, Byron H. Painter and wife, and Chas. H. Zug to same, dated August 3, 1864, recorded August 17, 1864 in Deed Book vol. 175, page 561. For the three undivided fourth parts of lots No. 72 and 73 plan aforesaid. Consideration, $7,500.

James McCutcheon and wife to same, dated June 28, 1864, recorded August 17, 1864 in Deed Book vol. 175, page 565, for two undivided sixteenth parts of lots Nos. 69 and 70, in said Bayard's plan. Consideration, $12,500.

Thomas Mitchell and wife to same. Dated March 14, 1865, recorded March 21, 1866 in Deed Book vol. 197, page 452, for part of lot 48 of said Bayard's plan Consideration, $5,000.

Robert McElroy and wife to same. Dated March 20, 1865, recorded May 21, 1866 in Deed Book vol. 197, page 450, for the southwest half of lot No. 67 in said plan.

James Dain and wife to same. Dated March 18, 1865, recorded March 21, 1865, in Deed Book vol. 182, page 262, a part of lot No. 62 in Bayard's plan. Consideration, $6,500.

Isaac Frees and wife to same. Dated August 16, 1864, recorded August 18, 1864, in Deed Book vol. 176, page 98, for the eastern half part of lot No. 42 in said Bayard's plan.

James P. Scott, et al. to same. Dated July 18, 1864, recorded July 20, 1864, in Deed Book vol. 164, page 328. Consideration, $3,000 for lot No. 39 in said Bayard's plan.

John Kearney to same. Deed dated January 18, 1865, recorded January 24, 1865, in Deed Book vol. 181, page 155. Consideration, $2,500 for part of lot No. 43 in same plan.

Sarah Jane Montgomery, et al. to same. Dated October 10, 1866, recorded October 19, 1866, in Deed Book vol. 207, page 594. Consideration, $3,000 for part of lot No. 43 in Bayard's plan.

Richard Gray, et al. to same. Dated August 12, 1865, recorded October 19, 1866, in Deed Book vol. 207, page 596. Consideration, $1,700 for the west one-half part of lot No. 40 of said Bayard's plan.

Thomas M. Thomas and wife to same. Dated August 16, 1864, recorded in Deed Book vol. 175, page 559. Date of record August 16, 1864. Consideration, $2,250 for northerly half part of lot No. 53 in said Bayard's plan.

Chas. Cassidy and wife to same. Dated September 2, 1864, recorded March 22, 1867, in Deed Book vol. 211, page 30. Consideration, $3,000 for eastern half part of lot No. 48 in said Bayard's plan.

Christopher Zug to Chas. H. Zug, his heirs and assigns. Dated March 20, 1867, recorded March 22, 1867, in Deed Book vol. 213, page 31. Consideration, $82,292.48. This is for the undivided fifth of all the property described in the preceding deeds to Christopher Zug.

Elizabeth McBride and others to Christopher Zug and Chas. H. Zug, their heirs and assigns. Dated August 31, 1872, recorded October 5, 1872, in Deed Book vol. 297, page 154. Consideration, $2,600 for the western one-third part of lot No. 4 in said Bayard's plan.

Sarah Niblack et al. to Christopher Zug and Chas. H. Zug, their heirs and assigns, in the proportion of four-fifths to the said Christopher, and one-fifth to the said Charles. Consideration, $3,000 for the eastern half part of lot No. 43 of said Bayard's plan.

Mortgage, Christopher Zug and Chas. H. Zug to the Pittsburgh Bank for Savings, dated January 11, 1876, recorded January 20, 1876, vol. 212, pages 655 and 656. Conditioned to pay $40,000 in one year from date on lots 49, 50, 51, 52, and four feet in width of lot 48 in said Bayard's plan.

Admitted that the above described pieces of property constituted the Sable Iron Works, and were sold as a whole by the trustees in bankruptcy.

CHRISTOPHER ZUG, sworn and examined, says:

I am one of the parties to the proceedings in bankruptcy. I am senior member of the firm of Zug & Co. referred to in this proceeding. That firm was organized first of August, 1864. The real estate upon which said firm did business is situnted in the Ninth Ward, City of Pittsburgh. The property was known as the Sable Iron Works. At the time of the organization of the firm I was the owner of said property, but previous to that time it had been owned by Zug and Painter, I owning the one-half, and that at that time Mr. Painter and others conveyed to me the other half. I put this real estate into the new firm as a part of the capital. The new firm was composed of myself and Chas. H. Zug, my son. I transferred the one-fifth to my son Charles, leaving four-fifths to myself. The conveyance by Mr. Painter embraced machinery, fixtures, tools, patterns, etc.—everything connected with the running of the mill. I do not recollect the amount of the capital this represented—the books will show (meaning the capital of the new firm). This property was improved afterward, a great many improvements being made by the new firm. These improvements were paid for out of the partnership fund of the new firm. All the machinery, etc. furnished was also paid out of the partnership funds of the new firm. I mean the machinery, etc. upon this property. We made purchases, from time to time, of other real estate, after the conveyance by Painter spoken of. These are the properties referred to by the exceptants in the testimony offered by Mr Hamilton. All the properties referred to were paid for out of the partnership funds. I think all all these properties were assessed against the firm for taxation purposes. The taxes were all paid by Zug & Co. I presume this property was insured in the name of Zug & Co. As between my son and myself we used this as partnership property, and I so considered it, but I do not know how my son considered it, as we never had any conversation about it. In the schedules filed in bankruptcy it is returned as the property of Zug & Co.

Chas. H. Zug had an interest of one-twentieth in the old firm of Zug & Painter. When Chas. H. Zug conveyed his

interest in the old firm to me, as shown by deed of August 3, 1864, vol. 175, page 56, before recited, I did not pay him any money therefor, but gave him in lieu thereof, the one-fifth interest in the firm of Zug & Co., as before stated.

Cross-examination by Mr. Hamilton:

I think my son Charles had a deed for the one-twentieth interest of the firm of Zug & Painter, and was also a party to the articles of co-partnership of the said firm. The Sable Iron Works were assessed in the name of Zug & Co. Chas. H. Zug knew that the various pieces of property were conveyed to me individually, that is, to me in my own name. Chas. H. Zug knew that the purchase money for these various pieces of property was paid out of the funds of the firm. In other words, Charles knew the conveyances were made to me, and that the property was paid for out of the funds of the firm. There was no attempt to conceal from Charles that this property was conveyed to me. At the time the property was bought, and the conveyances therefor made, Charles was aware that the same was conveyed to me. The conveyance of the interest of Chas. H. Zug, in the firm of Zug & Painter, was not the sole consideration for the interest conveyed to him in the firm of Zug & Co. The interest of Charles H. Zug, in the firm of Zug & Painter, was for much less than the one-fifth in the firm of Zug & Co. When we formed the partnership of Zug & Co., I estimated Charles' interest of one-fifth at eighty-two thousand dollars. I mean at the time I made the deed in April, 1867, it was so estimated. Chas. H. Zug's interest in the old firm of Zug & Painter, I think, was about twenty thousand dollars. Charles had no other real estate besides his interest in the firm of Zug & Painter. To my knowledge, Charles had no other real property, besides that in the firm of Zug & Co. The various pieces of property, for which deeds have been exhibited, constitute what is known as the Sable Iron Works.

Re-direct examination:

The consideration of my conveyance of the one-fifth interest in the firm of Zug & Co., in addition to his interest in the firm

of Zug & Painter, was natural love and affection, or a mere gift from me to him. I did not take into consideration the value of his interest in the firm of Zug & Painter.

C. ZUG.

GEORGE ARTHUR LENNOX, being sworn, says:

I am corresponding clerk of the commercial agency of John McKillop & Co., and have been for one year. I was copyist for the said firm in the year 1875. (Copy of the report of said mercantile agency produced by witness.) On page 148 I made the entry in reference to Zug & Co. Copy of said entry produced, marked A, and hereto attached.

G. A. LENNOX.

CHAS. H. ZUG, being sworn, says:

I am of the firm of Zug & Co. My interest in the firm is one-fifth. I am one of the parties to the proceedings in bankruptcy. The real estate of the firm is known as the Sable Iron Works, and is situated in the 9th ward, city of Pittsburgh. This property was purchased by the new firm of Zug & Co. at the time of its organization, and at other times subsequent, and was paid for by the firm of Zug & Co. out of partnership funds. The same is true with reference to the whole of the property. The improvements were paid for by Zug & Co. out of partnership funds. The property was assessed in the name of Zug & Co. The taxes were paid by Zug & Co. The property was insured in the name of Zug & Co. We had losses by fire between the time of the organization of the firm and the filing of our petition in bankruptcy. We collected the insurance—I mean Zug & Co. We used the money from insurance in repairing the damage by fire. I held and treated and used the property as partnership property, and believed my father so considered and held it. We used it as partnership property. On the books and accounts of our firm it was treated as partnership property. On our schedules in bankruptcy we returned it as assets of Zug & Co.

Cross-examination by Mr. Hamilton:

The property embraced in the mortgage to the Pittsburgh Bank for Savings constituted part of the "Sable Iron Works." The interest in Zug & Painter was given me by my father for services. This was given me after I had been there three or four years. During this time I received wages for my services. I was paid during that time about five hundred dollars per year for a few years. Previous to my having an interest in the firm my salary was about ten or twelve hundred dollars a year. I can't now remember just how much it was; at any rate, it was paid me.

Re-direct:

Prior to the dissolution of the firm of Zug & Painter, I was a partner from five to seven years—about that time, I think.

Zug & Co. got the proceeds of the mortgage to the Pittsburgh Bank for Savings.

I had no idea, when I signed the mortgage, nor was it my intention, to convey it as individual property.

CHAS. H. ZUG.

A. F. KEATING, being sworn, says:

I went to Zug & Co. on the 4th day of June, 1866, as bookkeeper, and continued in their employ as such until the 11th of March, 1876, the day on which they filed their petition in bankruptcy. All of the portions of the property of the Sable Iron Works purchased after I went into the employ of the firm was paid for out of the funds of the firm. All of the real estate was carried on the books of the firm as the firm's property. This was called the "Sable Iron Works Real Estate Account." This included all the property acquired of Zug & Painter, and afterwards purchased with the funds of the firm. The property was asssessed in the name of Zug & Co. I attended to that part of the business myself. I saw it on the books of the city and county. Zug & Co. also paid the taxes. It was insured in the name of Zug & Co.

Cross-examination:

A. F. KEATING.

Article of agreement, made the 1st day of September, 1865, between Christopher Zug and Chas. H. Zug, declaring the real estate to be partnership property, and defining the interests of the partners in the firm of Zug & Co., offered in evidence; also schedules in bankruptcy, filed at 2,675 of this Court in Bankruptcy, B 3, pages 6, 7, and 8, showing property to be firm property; that is, the real estate returned in said schedule as firm property by the bankrupts.

Adjourned until Tuesday next at 3 o'clock P. M.

TUESDAY, June 12, 1877.

Met pursuant to adjournment. Present, Geo. P. Hamilton, John M. Kennedy and Jacob F. Slagle.

Deed from Thomas Mitchell and wife and others to Jacob Painter, Bryon H. Painter, Charles H. Zug and Christopher Zug, partners trading as Zug, Painter & Co., dated March 30, 1864, recorded in D. B. Vol. 172, page 115, for the Sable Iron Works property, conveyed to Christ Zug, as of date August 3, 1864, offered in evidence by Mr. Slagle.

Re-direct examination of Chas. H. Zug:

At the dissolution of the firm of Zug & Painter, the two Painters owned one-half, and father and myself owned the other half of the interest in the firm—personal property and real estate. The property, upon the dissolution, was divided half and half, by estimation. The half coming to C. & C. H. Zug consisted of real estate and money. We also divided up the stock on hand, which was charged up to the parties according to what they got. All of that estate, real and personal, coming from the firm of Zug & Painter, was put into the new firm of Zug & Co. At the time of the dissolution, the firm of Zug & Painter had liabilities, which were settled by Zug & Co. paying one-half of the same. Zug & Co. gave their paper in settlement of a part of said liabilities. The paper was paid at maturity by Zug &

Co. The real estate heretofore mentioned as coming from Zug & Painter to the new firm of Zug & Co. was the Sable Iron Works. That included the entire works then owned by Zug & Painter, known as the Sable Iron Works. I don't remember the amount of personal property coming from Zug & Painter at the time of dissolution to the firm of Zug & Co. There was a considerable amount. The firm of Zug & Painter had liabilities. Upon the dissolution of the firm, there were orders on the books —orders for mechandise—and which came in afterwards. These orders were filled by Zug & Co., partly, and J. Painter & Sons filled the residue. These moneys were collected by Zug & Painter, and appropriated to the discharging of the liabilities of Zug & Painter. The notes I spoke of may have been for the indebtedness of Zug, Lindsey & Co. I am not sure.

Cross-examination :

The firm of Zug, Lindsey & Co. preceded that of Zug & Painter.

Question. Do you know whether the notes referred to in your testimony were given on account of Zug & Painter or Zug, Lindsey & Co. ?

Answer. I am not positive on which account.

Ques. Do you say that, according to the best of your recollection, the notes referred to were given on account of indebtedness of Zug & Painter?

Ans. I do not remember.

Ques. Mr. Zug, did the formation of the firm of Zug & Co. precede or follow the dissolution of the firm of Zug & Painter ?

Ans. Follow.

Ques. Had the firm of Zug & Co. any interest in the firm of Zug & Painter?

Ans. No, sir. As individuals they had, but as a firm they had not.

Ques. What did you mean in your testimony by saying that the property purchased by the new firm of Zug & Co., at the time of its organization, was paid for by the firm of Zug & Co. ?

Ans. I mean with the contribution to the capital stock of Zug & Co. consisted partly of this property—the Sable Iron Works property.

Ques. Is the property you refer to in your preceding answer the same that was conveyed by Jacob Painter and wife to Christopher Zug by deed dated August 3, 1864.

Ans. Yes, sir; I think that's it.

Ques. Does your answer also refer, in addition to that, to certain other property conveyed by Jacob Painter and wife, Byron H. Painter and wife, and Chas. H. Zug to Christopher Zug by deed dated August 3, 1864?

Ans. Yes, sir.

Ques. The properties described in the deeds referred to went into the joint stock of Zug & Co.?

Ans. Yes.

Ques. Is it in that sense that you stated that the properties described in said deeds was paid for by the firm of Zug & Co.?

Ans. Yes, sir. My interest in Zug & Painter was part of that property.

Re direct by Mr. Slagle:

Question. You stated that the firm of Zug & Co. followed the dissolution of the firm of Zug & Painter. I wish you would state whether or not it was formed immediately at the dissolution of Zug & Painter?

Answer. Well, immediately after. I mean it was formed immediately after the dissolution of the old firm.

Ques. State whether arrangements for the formation of the firm of Zug & Co. were made prior to the actual dissolution of Zug & Painter?

Ans. Yes, sir.

Ques. State whether the firm of Zug & Co. was formed before the transfer of properties from Painter and others?

Ans. There were no papers drawn between father and myself. It was understood what it would be.

Ques. State whether or not all the property you and your father got from Painter and others for your interests in the firm of Zug & Painter went into the new firm of Zug & Co.

Ans. Yes, sir.

Cross-examination by Mr. Hamilton:

Question. Can you state why the deeds of Jacob Painter and wife, Byron Painter and wife, and C. H. Zug, were made to Christopher Zug alone.

Answer. My memory is that it was for convenience in settling up the Zug & Painter business.

Ques. Were the deeds so made with your consent?

Ans. Yes, sir.

CHAS. H. ZUG.

WILSON A. SHAW, being sworn, says:

I am cashier of the Merchants and Manufacturers National Bank of Pittsburgh. Zug & Co. made application to our bank for loans in the latter part of the year 1875. We made inquiry as to their assets through the agency of McKillop & Co. We got a report from the said agency. After making the first inquiry, the agency made a supplemental report, though not at our request.

Copy of the report furnished the Merchants and Manufacturers National Bank produced marked Exhibit "A," and hereto attach.

[Report handed the witness.]

This is a copy of the report furnished the Bank by the agency of McKillop & Co.

After receiving that report, we made loans to Zug & Co.

WILSON A. SHAW.

It is admitted that the information contained in Exhibit "A" was given to the Mercantile Agency by Chas. H. Zug.

Copy of Mortgage, certified, of Christopher Zug and Chas. H. Zug, to the Pittsburgh Bank for Savings, dated 11th day of January, 1876, and recorded January 20, 1876, in Mortgage Book 212, page 654, presented and marked Exhibit "B."

EXHIBIT "A."

ZUG & CO., SABLE IRON WORKS,
Pittsburgh, Pa.

W. H. H., November 9, 1875. Composed of father and son. The son was admitted to partnership on March 20, 1867, by his father, who ostensibly sold him, but really gave him one-fifth interest in the concern for $82,292.46. Since which time the firm has been as above. Christopher Zug is one of the oldest iron manufacturers in the country, and was formerly connected in business with J. Painter, Lindsay, Graff, and others, whom he bought out gradually, until the entire concern became his own. His career has been remarkably successful, and though extremely cautious and conservative in character and business, he has been quick to appropriate and apply new and improved machinery and methods regardless of cost, and as a result his mill is perhaps the most complete for its capacity in the country, and is justly regarded as one of the most desirable mill properties in the State.

At our request Mr Charles H. Zug makes the following statement of the present condition of the firm, viz., ASSETS: "Mill property in Ninth Ward, containing nearly three acres, "between Pike street and the river, clear of encumbrance, "$400,000. [We regard this valuation moderate, even under "existing condition of things.] Bills receivable, $46,000. Ac- "counts receivable, $80,000. Stock, $90,000. Total, $616,000. "LIABILITIES: Consisting of bills and accounts payable, due "mainly to banks and for ore, etc., about $210.000. Aside "from the bulk of the assets above mentioned, the firm holds "thirty-seven shares in Artisans Insurance Co., twenty shares "in Armenia Insurance Co., and $50,000 suspended accounts, "much of which is good. Outside the firm Christopher Zug "owns fourteen acres at Oakland, in Fourteenth Ward, which "is very valuable; five-eighths in the Oakland and East Liberty "Passenger Railway Co., besides other property, stocks, etc., to "very considerable amount." The son has no very considerable avails outside the firm, but estimates himself worth about $10,000. He is a Director in the Exchange National Bank, and

manages, to a great extent, the financial and business department of this firm. On the 1st of September, 1875 (C. H. Zug states), that the liabilities of the concern were $163.000 more than at the present time; all of which reduction has been made since that time. Bank at Exchange and Bank of Pittsburgh. Their credit has never been impeached, and we consider them good for any contract or responsibility they may be likely to assume.

W. H. H., November 16, 1875. In giving statement of November 9th inst. the firm omitted to include in their assets the following item, viz., five-eighths interest in coal property on Allegheny River at Sandy Creek, known as Sable Coal Co., consisting of thirty-three acres of coal land, thirty-seven cars, tracks, inclines, sidings, mules, forty pit cars, etc.; their interest being valued at $16,000 to $18,000.

EXHIBIT "B."

THIS INDENTURE, made the eleventh day of January, eighteen hundred and seventy-six, between Christopher Zug and Charles H. Zug, of the city of Pittsburgh, County of Allegheny, and State of Pennsylvania, party of the first part, and the Pittsburgh Bank for Savings, incorporated by the State of Pennsylvania, party to the second part. Whereas said parties of the first part, mortgagors, by their certain bond, bearing even date herewith, stand bound unto said party of second part, mortgagee, in the penalty of eighty thousand dollars, conditioned to pay the sum of forty thousand dollars in one year from the date thereof, with interest thereon from the date thereof at the rate of six per centum a year, until the whole of said principal debt or sum shall be fully paid, the said interest being payable semi-annually from the date of said bond. Also, for the payment from time to time of all premiums and charges which shall be necessary to renew and keep alive the policy of insurance taken out by or in behalf of the said corporation on the buildings and improvements standing on the land hereinafter described and conveyed; and also, in case of default be made in the payment of said principal, debt or sum, or of any semi-annual instalment when due and payable, as aforesaid; conditioned further for the

payment of interest thereafter at the rate of ten per cent. per annum, all costs, fees, and expenses of collecting the same, including an attorney's fee of five per centum. Now, this indenture witnesses that the said parties of the first part, mortgagors, as well for, and in consideration of, the above debt, or sum of money, and for the better securing payment of the same with interest unto the said party of the second part, mortgagee, its certain attorney and assigns, according to the conditions of said bond and satisfaction and discharge thereof as for and in consideration of the further sum of one dollar, unto them in hand well and truly paid by the said party of the second part, mortgagee, before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said party of the second part, mortgagee, and assigns,

All that parcel of land situate on the easterly corner of Thirteenth (formerly Walnut) street and Etna (formerly Water) street, in the Ninth Ward of said city, described as follows: Beginning at said corner and running thence northeastwardly two hundred and four feet, and thence bordering upon Thirteenth street, preserving the same width, southeastwardly one hundred feet, being lots numbered 49, 50, 51, and 52, and four feet in width of lot 48, in Bayard's plan of the Northern Liberties, together with all and singular the buildings and improvements, streets, lanes, alleys, passages, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders thereof, to have and to hold the said described property, hereditaments, and premises hereby granted and conveyed, with the appurtenances, unto the said party of the second part, mortgagee, and its assigns, to their only use and behoof forever. Provided, always, however, that if the said parties of the first part, their heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said party of the second part, its certain attorney or assigns, the aforesaid debt or sum of money, on the day and time hereinbefore mentioned and appointed for the pay-

ment thereof, without any fraud or further delay, and without any deduction, defalcation or abatement, to be made for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth as well this present indenture, and the estate hereby granted as the said bond, shall become null and void. Provided further, that in case of default in the payment of any of the interest, or any installment of the principal of this mortgage, or of any premium of insurance for buildings, after the same shall become due and payable, according to said bond, *scire facias* may at once issue upon this mortgage for the whole amount of principal and interest unpaid, and interest after such default at the rate of ten per centum per annum, and all premiums of insurance and the whole amount thereof, together with attorney's commissions of five per cent. on the same, and all fees, costs, and expenses, shall then become due and payable, and may be collected, waiving all stay laws and exemption laws, and waiving and releasing all errors in testimony. Whereof said parties of the first part have hereunto set their hands and seals the day and year above named.

Signed, sealed and delivered in presence of, the interlineation as to ten per cent. interest on this said first page made before signing.

CHRISTOPHER ZUG. [SEAL.]

CHARLES H. ZUG. [SEAL.]

C. O'DONNELL.

COUNTY OF ALLEGHENY,
CITY OF PITTSBURGH,
STATE OF PENNSYLVANIA, } ss.

Before me, the subscriber, personally came the within named mortgagors, Christopher Zug and Charles H. Zug, and acknowledged the within mortgage to be their act and deed, and desired it to be recorded as such.

Witness, my hand and seal this 20th day of January, 1876.

C. O'DONNELL, [SEAL.]
Alderman.

The Pittsburgh Bank for Savings, mortgagee, per Chas. G. Milnor, Treasurer, do hereby acknowledge payment and satisfaction in full of this mortgage.

Witness, my hand and seal January 29, 1877.

CHAS. G. MILNOR, [SEAL.]
Treasurer.

Attest:
WM. J. RUCH.

STATE OF PENNSYLVANIA, }
COUNTY OF ALLEGHENY. } ss:

I, Ralph J. Richardson, Recorder of Deeds, &c., in and for said county, do certify that the foregoing is a true copy of a mortgage recorded on the 20th day of January, A. D. 1876, in Mortgage Book vol. 212, page 654.

Given under my hand and official seal at Pittsburgh, Pa., this 12th day of June, A. D. 1877.

[SEAL.]

R. J. RICHARDSON,
Recorder.

WESTERN DISTRICT OF PENNSYLVANIA, ss:

I, S. C. McCandless, Clerk of the District Court of the United States for the said district, do hereby certify that the foregoing depositions of witnesses were taken and reduced to writing by Wm. T. Lindsey, assistant clerk of said court, and in the presence of said court and counsel.

Witness my hand and the seal of said court this twelfth day of June, A. D. 1877.

[SEAL.]

S. C. MCCANDLESS,
Clerk of said Court.

FILED
NOV 14 1882
JAMES H. McKENNEY, CLERK

IN THE

Supreme Court of the United States.

NO. 90.

Appeal from the Circuit Court of the United States, for the Western District of Pennsylvania.

THE MERCHANTS & MANUFACTURERS NATIONAL BANK, and others, Appellants,

versus

JOHN S. SLAGLE and REUBEN MILLER, Trustees, and others.

Brief of Argument and Authorities for the Appellees.

GEORGE SHIRAS, Jr.
J. M. STONER,
S. SCHOYER, Jr.
Counsel for the Appellees.

IN THE

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THE MERCHANTS & MANUFACTURERS NATIONAL BANK, and others, Appellants,

versus

JOHN S. SLAGLE and REUBEN MILLER, Trustees, and others.

BRIEF OF ARGUMENT FOR THE APPELLEES.

On March 11th, 1876, Christopher Zug and Charles H. Zug filed their petition in bankruptcy in the District Court of the United States, for the Western District of Pennsylvania, and such proceedings were had that the petitioners were adjudged bankrupts, and subsequently obtained their discharge, and that finally, on July 13th, 1877, the said court made a decree of distribution of the proceeds of the estates of the bankrupts among their creditors.

It is of the distribution of the funds, so ordered by the District Court, that complaint is made by the appellants; and our first position, on behalf of the appellees, is, that the

District Court had full and exclusive jurisdiction of the marshaling and distribution of the funds of the bankrupt estates among the creditors, and that the decree of said court, made in the exercise of such jurisdiction, is final and conclusive, and cannot be successfully assailed or impeached by an original bill in equity filed in the Circuit Court by creditors who were parties to the proceedings in the District Court.

The jurisdiction of the District Court, in bankruptcy, is granted and defined in the first section of the Act of June 2d, 1867, in the following terms:

"That the several District Courts of the United States, be, and they hereby are constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy; and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this Act. * * * * And the jurisdiction hereby conferred shall extend *to all cases and controversies* arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; *to the adjustment of the various priorities and conflicting interests of all parties; and to the marshaling and distribution of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all acts, matters and things, to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy.*"

This language is too explicit to leave room for argument that the jurisdiction of the District Court is full and exclusive in matters of bankruptcy. It is true, that in and by the second section of the Act, certain supervisory and concurrent powers

are conferred upon the Circuit Courts. But those supervisory powers do not warrant the filing of an original bill in equity in the Circuit Court, but are to be invoked in the way of a bill of review, or by petition, averring some special matter of exception to the action of the District Court. And, in the present case, these powers of the Circuit Court were twice invoked by the appellants, when they sought the views of that court upon the very matters of which they complain in their present bill. Nor are such cases the subject of appeal to this court.

Marshall vs. Knox, 16 Wallace, 555.

Stickney vs. Wilt, 23 Wallace, 150.

Neidt v Coleman 50th, 268

But it is contended, on behalf of the appellants, that the District Court had no jurisdiction to make the decree of distribution that it did make, and that such want of jurisdiction arose because, in the course of these bankruptcy proceedings, and in pursuance of the provisions of the forty-third section of the Act, trustees were appointed, instead of an assignee, to wind up and settle and distribute the bankrupt estates, under the inspection and direction of a committee of the creditors.

It is claimed that such committee had full jurisdiction of the matter of distribution, that "having decided, their judgment was conclusive," and that the court had no jurisdiction to correct, control or modify their action, however erroneous or unjust it may have been. This amounts to an assertion, that by the forty-third section of the Bankrupt Law, judicial functions were conferred upon the committee of creditors, and that such committee is constituted a court, from whose judgment no appeal lies.

But what kind of a court would that be which has no original or mesne process; which has no record, or clerk to register its proceedings; which has no power to enforce its judgments by execution or attachment? Possibly it might be

competent for Congress, under the constitutional grant of power in that behalf, to establish a special court in bankruptcy, with a jurisdiction concurrent with that of the District Court. But, in order to be a valid and constitutional court, it must possess the functions and characteristics of a court.

Even a cursory reading of the Act shows that Congress was far from intending to establish such a tribunal. Not only is there an entire absence of provisions equipping the committee or trustees with the powers and machinery of a court, but there are express powers looking to the continued powers of the District Court. The first section, already cited, shows that the intention of Congress was, that the jurisdiction of the court should not only extend to all controversies arising, and to all acts, matters and things to be done under and by virtue of the bankruptcy, but that said jurisdiction should continue "until the final distribution and settlement of the estate of the bankrupt, and the *close of the proceedings in bankruptcy*," and in and by the forty-third section itself, "the winding up and settlement of any estate under the provisions of this section" are ~~declared~~ deduced to be "*proceedings in bankruptcy under this Act.*"

In addition to all this, it is provided, that even after the resolution and consent of the necessary quorum of creditors, and after the filing of the resolution, if the court shall not think fit to approve thereof, "the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings," which seems clearly to imply the continuing and abiding power of the court.

If the committee or the trustees do not themselves constitute a court, whose jurisdiction and proceedings are unimpeachable, and whose judgment is not subject to revision by any other court, then the accounts of said trustees must be subject

to exception and revision, and, if the contention of appellants be sound, that the jurisdiction of the Federal Court wholly ceases over the bankrupt estates on the filing and approval of the resolution, then it will necessarily follow that the supervision of the accounts of the trustees will vest in the State courts, and the curious spectacle will thus be presented of a divided or apportioned jurisdiction between the Federal and State courts.

We submit that the proceeding in bankruptcy, from the filing of the petition to the discharge of the bankrupt, the final distribution among the creditors, and the settlement of the accounts of the trustees, is a single statutory case or proceeding, and that the jurisdiction of the District Court continues, in the language of the Act, "until the final distribution and settlement of the estate of the bankrupt and the close of the proceedings."

The case *In Re.* Jay Cook & Co., National Bankruptcy Register, vol. 11, page 1, is cited by the appellants as an authority in favor of their position, that the decision of the committee in all matters of distribution, is conclusive, and that even the court cannot interfere. That was the case of a review by the Circuit Court of an order made by the District Court, in a case where the creditors had resolved to proceed under the forty-third section, directing a second meeting of creditors for the purposes stated in the twenty-seventh and twenty-eighth sections of the Act. And Judge Strong very properly held, that proceedings under the two latter sections were altogether inconsistent with those under the forty-third section, and that consequently it was not competent for the body of the creditors to set aside proceedings under the forty-third section or to control the discretion of the committee by any meeting called after their appointment. But Judge Strong held, in his opinion, that it *was* competent for the

court to interfere and control the exercise of the discretion of the committee in case of misbehavior. The case did not call for any consideration of the cases in which the court should interfere with the decision of the committee, and therefore cannot be cited in a decision of the question now before the court.

As a matter of legal history it may be remarked, that the forty-third section of our Act is based upon similar sections of Chapter 134 of 24 and 25 Victoria, and that the English Act expressly provides, that the court shall continue to have jurisdiction to entertain any application of any creditor or of the bankrupt for the decision of any dispute or question that may arise.

We also call attention of the court to the interpretation put upon the forty-third section, in this particular, by this court, when prescribing for the conduct of the Court in Bankruptcy, as follows :

"FORM LXIII. ORDER OF COURT.

"The foregoing proceedings, under the forty-third section of the Bankrupt Act of March 2d, 1867, having been placed on file and read, it is ordered that all proceedings upon said petition in bankruptcy be stayed *until the further order of the court.*"

It is further contended, that because the bankrupts had, in their schedules, listed the Sable Iron Works as partnership property, the creditors were estopped from contending, after the resolution to wind up by trustees was adopted, that the schedules were incorrect. We humbly submit, that there was not a single element of estoppel in such a resolution. It had, at the most, this significance, that the trustees and committee, instead of the entire body of the creditors and the court, should deal with the questions arising under the proceedings. The trustees and committee were not bound by the allegations

of the bankrupts in their schedules. They had the power to marshal the assets and make distribution as right and justice should demand. But if the trustees and committee were conclusively bound by the statements of the bankrupts in their schedules, and if such statements were false or incorrect, then such a state of facts, instead of estopping the injured creditors from invoking the court, would constitute a good and sufficient reason for the interposition of the Court.

It is further urged, that even if the District Court had the jurisdiction claimed, yet that its exercise was not duly sought by petition, but that an original and plenary bill in equity should have been filed. But the forty-third section itself provides, that the "court, by orders, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors," and that the court shall have the power, on application of the trustees, to compel the attendance of witnesses, the production of books and papers, in order to "aid the trustees in the execution of their trust, in the same manner as in other proceedings in bankruptcy under this Act," which provisions clearly imply both the continuing power of the court and its invocation by mere application or petition. If, indeed, the District Court possesses the powers that we claim for it, (and the objection that we are considering concedes such power,) it possesses it as a Bankrupt Court, and not as a court of general equity powers; and the proper procedure was the one followed.

The case of *Lewis, Trustee, vs. United States*, 2 Otto, 618, is thought by the appellants to give color to this objection. In that case the United States had sought to enforce their claim as a preferred creditor of certain bankrupts by an original and plenary bill in equity in the Circuit Court of the United States, and it was objected that the United States should have proved their claim regularly in the bankruptcy

proceedings, which were being conducted under the provisions of the forty-third section. But the Supreme Court held, "that the United States are in nowise bound by the Bankrupt Act," and that the objection was, *therefore*, without force. Indeed, the logic of the case is directly, that private parties *must* prove their claims and ask the aid of the court as a Bankrupt Court, and not by going into a general court of equity. A consequence of the appellants' present contention would be, that if the creditors injured were not citizens of a different State from the trustees, they would be obliged to go into the State courts for relief, which was surely not the intention of Congress, nor within the scope of the Constitution of the United States in providing for a system of bankruptcy.

If the foregoing reasoning is sound, then this record presents no other questions which this court can consider, and the decree of the Circuit Court, dismissing appellants' bill, should be affirmed.

But if the Court should hold that it can, upon the present appeal, revise the action of the District Court in its exercise of power as a Bankrupt Court, then we contend that the action of the District Court, complained of in the present instance, and of the Circuit Court in affirming it, was in accordance with law, and should be affirmed.

And here there are two questions for the consideration of the Court: *First.* What is the law in the State of Pennsylvania, in regard to the distribution of the proceeds of real estate when such proceeds are to be distributed among partnership and individual creditors in the case of an insolvent firm? *Second.* Is the law of Pennsylvania, in such a case, obligatory upon the District and Circuit courts for that State when in the exercise of their functions as courts of bankruptcy?

If we succeed in showing that the District and Circuit Courts, in the case in hand, followed the law, as clearly and finally

held by the Supreme Court of Pennsylvania, and that they were justified in following the rules of distribution of the proceeds of real estate laid down by the State Court, then we shall be relieved from discussing the conflicting decisions of other courts.

And first, as matter of fact, the funds in question were the proceeds of pieces of land, which, by deeds of record, were and had long been held by Christopher Zug and Charles H. Zug, the bankrupts, as tenants in common—four undivided fifths thereof to Christopher Zug, his heirs and assigns, and one undivided fifth thereof to Charles H. Zug, his heirs and assigns. The records also disclosed that the two Zugs had mortgaged these lands as such tenants in common. It may be also observed, as matter of fact, that the ten per cent. dividend made by the trustees and committee, was made out of the proceeds of personal partnership property, and involved in nowise, any decision of the committee as to the character of the proceeds of the sale of the real estate. At all events, it is indisputably true, that the funds in question are the sole proceeds of land that stood of record since its purchase, at various times, and at the time of the filing of the petition in bankruptcy, in the names of Christopher and Charles H. Zug, as tenants in common; that no declaration of any intention to hold those lands as partnership property was ever recorded; and that the records further disclose, that the Zugs treated the lands as their individual property as tenants in common, by mortgaging it as such.*

In this state of facts, the law in Pennsylvania established by a long series of unvarying decisions, is that *as to purchasers and creditors*, a deed to persons who are in fact partners, but who take the title to themselves as tenants in common, must stand as the foundation of their rights, and govern in the distribution of the proceeds of a sale of the title—that partner-

* It should also be observed that the principal part of these l
was not bought with partnership funds, as alleged by th
appellants, but came to the Zugs as their shares of a pr
partnership which had been wound up.
See Testimony of C. H. Zug
28, 29, & 30 of Appellants' brief.

ship creditors cannot by parol evidence, change the effect of the deed, and convert lands so individually held into assets of the partnership, and thereby dislodge and postpone the claims of individual creditors.

Hale vs. Henrie, 2 Watts, 145, was a contest between partnership and individual creditors, where the debtors held lands, used and paid for with partnership funds, as tenants in common. *Held*, That "to permit a person, apparently owning property as an individual, to aver a different right in himself as partner, by which his relations to creditors and others are to be affected, would defeat the statute of frauds and perjuries, by which no interest in real estate (except a lease for a short period), can vest or be transformed without deed or writing. It would be even worse than to pass real estate without writing; since a deed would thus express one thing and mean another; and our recording acts, instead of being guides to truth, would be no better than snares." "That the partners could appropriate their firm moneys as they pleased, and they chose to appropriate it to a purchase of land for themselves individually, and not as partners. Having done so, it cannot be defeated by proving otherwise than by deed, that they held as partners."

Lancaster Bank vs. Myley, 1 Harris, 145: "A title to land cannot be affected or overborne by *parol* evidence that a deed to two or more persons as tenants in common, was purchased and paid for by them as partners, and was partnership property; because that would be to destroy and contradict the title by deed, and set up a parol title in its place. When parties intend to bring real estate into a partnership stock, such intention must be manifested by writing placed of record."

In *Ridgway, Budd & Co.'s Appeal*, 3 Harris, 177, in a contest between creditors, it was held, that "when partners

intend to bring real estate into partnership, their intention must be manifested by deed or writing placed of record; and it is not competent to show by parol evidence, that real estate conveyed to two persons as tenants in common, was purchased and paid for by them as partners, and was partnership property."

In *Lefevie's Appeal*, 19 P. F. Smith, 125, the subject received elaborate treatment by Judge Sharswood, speaking for the entire court. It was a case of a contest for the proceeds of real estate between creditors of a firm and creditors of the individuals composing the firm; the real estate was held by them as tenants in common, and there was an offer to show that it was paid for and held as partnership property. *Held*, That "as to strangers, mortgagees, purchasers and creditors, the agreement of partners, to make real estate part of the common stock, must be in writing and on record; that if the acquiescence of the members of a firm, partnership funds are applied to the purchase of real estate in the name of the member, there is no resulting trust. That it is not competent to show by parol that real estate conveyed to tenants in common is partnership property. That no averment of any right by parol or by, what is still less, the nature of the fund which pays, or the uses or purposes the property is applied to, can be allowed to stamp a character on the title inconsistent with that appearing, on the deed and record, to the prejudice of third persons."

In *Ebbert's Appeal*, 20 P. F. Smith, 81, the subject received further examination and elucidation, and the distinction is clearly brought out between the question as between the parties themselves and as between the two classes of creditors. It was held, that "partners, being the owners of the money which pays for the title, have the power of directing its application to suit their own purposes, and can, if they choose,

always secure the identity of its character in the kind of title they take for it. If, therefore, they take the title to themselves as tenants in common, instead of as partners, they, by their own election, stamp the character of the title as to those who afterwards deal with them. That to alter a deed so as to make it of different import offends against the spirit of all those laws made to protect the public against fraud and secret titles and prevent a change of right to the prejudice of those who deal upon the apparent legal operation of the instrument. That it is very clear that honest creditors, who are led to give credit to the individual partners on the apparent state of the title of them individually, ought not to be afterwards met by a change of face in the deed by which it takes a partnership aspect contrary to its terms."

In these two latter cases, the cases cited in the appellants' argument, as recognizing a different rule, are examined and shown to be entirely consistent with the rule as laid down in the foregoing series of cases. They are either cases where the question arose simply between the partners themselves, or where there was a fraudulent use of partnership funds, thus creating a resulting trust.

It being, therefore, clear, beyond reasonable controversy, that the rule in Pennsylvania is as claimed by the appellees, it remains only to inquire whether the Federal Court was warranted in adopting and applying the rule.

If the matter, then, is open for this court to consider the correctness of the conclusion of the District Court in awarding the funds in question to the individual creditors of the bankrupts, we support that conclusion by two contentions: *first*, that the general rule in equity, as laid down in England and this country, justified it; and *second*, that, at all events, the court was justified in following the Pennsylvania rule.

See also later case, Bank's Appeal, 8 3 Pa S Rpt, 203, where the doctrine of Ebbert's Appeal is approved & applied in a contest between partnership and individual creditors for the proceeds of sheriff's sale of lands.

In the argument for the appellants, it is claimed that the Pennsylvania rule "is clearly opposed to the decision of all other courts in the United States and England"; and so clear are their learned counsel on this point, that they do not cite a a single case actually to the contrary of the Pennsylvania rule, for which we contend.

It is, doubtless, true that there is a general rule that, as between partners, partnership assets must be applied, in cases of insolvency, to the payment of partnership debts; and that the rights of creditors are to be worked out through the equities of the partners. But our proposition, that, in cases in which the fund is the proceeds of real estate standing in the name of the partners as individual tenants in common, the legal title cannot be affected or impressed by parol with a trust as against the creditors of the individuals, who trusted and dealt with them on the strength of such title, is not inconsistent with that rule. On a question of this kind the English cases are entitled to very little weight, as a system of recording deeds does not prevail there.

The last case decided on this subject by this court, *Shanks vs. Klein*, 14 Otto, 18, is not at variance with our proposition. That was a case between a surviving partner and the heirs and devisees of a deceased partner. It did not appear that there were any creditors of the estate of the deceased partner.

But, lastly, the District Court was warranted in following the Pennsylvania rule, because it is a rule of property. In such cases it is the duty of the Federal Court to follow the State law, even if different from the law as held elsewhere.

Nichols, vs. Levy, 5 Wallace, 433.

Williams vs. Keitland, 13 Wallace, 306.

It would be very confusing if, in cases of insolvency, different rules should prevail in applying the proceeds of real estate in the State and Federal tribunals.

The creditors of Charles and Christopher Zug relied on the law as it has prevailed in Pennsylvania for fifty years. Their debtors had filed and recorded a written allegation, in the shape of solemn deeds, that they held and owned a large real estate as individual tenants in common. If the State courts were distributing the fund it would go to the appellees. Why should a Federal Court, sitting in Equity, assert a different rule; particularly, when the State Court puts its decision largely upon an interpretation of the State statutes?

GEORGE SHIRAS, JR.,
J. M. STONER,
S. SCHOYER, JR.,
Counsel for Appellees.